WYDEN) was added as a cosponsor of S. 1091, a bill to provide funding for student loan repayment for public attorneys.

S. 1116

At the request of Mr. LEVIN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1116, a bill to amend the Federal Water Pollution Control Act to direct the Great Lakes National Program Office of the Environmental Protection Agency to develop, implement, monitor, and report on a series of indicators of water quality and related environmental factors in the Great Lakes.

S. 1125

At the request of Mr. HATCH, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 1125, a bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

S. 1153

At the request of Mr. SPECTER, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1153, a bill to amend title 38, United States Code, to permit medicare-eligible veterans to receive an out-patient medication benefit, to provide that certain veterans who receive such benefit are not otherwise eligible for medical care and services from the Department of Veterans Affairs, and for other purposes.

S. 1182

At the request of Mr. MCCONNELL, the names of the Senator from Iowa (Mr. HARKIN), the Senator from Ohio (Mr. VOINOVICH), the Senator from Minnesota (Mr. DAYTON), the Senator from Oregon (Mr. SMITH), the Senator from Vermont (Mr. JEFFORDS), the Senator from North Carolina (Mrs. DOLE), the Senator from Illinois (Mr. DURBIN), the Senator from North Carolina (Mr. EDWARDS) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 1182, a bill to sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the legitimate representative of the Burmese people, and for other purposes.

S. 1182

At the request of Mr. REID, his name was added as a cosponsor of S. 1182, supra.

S. 1201

At the request of Mr. GRAHAM of South Carolina, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 1201, a bill to promote healthy lifestyles and prevent unhealthy, risky behaviors among teenage youth.

S. 1203

At the request of Mr. ENZI, the names of the Senator from Iowa (Mr. GRASSLEY), the Senator from Mississippi (Mr. COCHRAN) and the Senator from Wyoming (Mr. THOMAS) were added as cosponsors of S. 1203, a bill to amend the Higher Education Act of 1965 regarding distance education, and for other purposes.

S. 1215

At the request of Mr. MCCONNELL, the names of the Senator from Nevada (Mr. REID), the Senator from Ohio (Mr. VOINOVICH) and the Senator from North Carolina (Mr. EDWARDS) were added as cosponsors of S. 1215, a bill to sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the legitimate representative of the Burmese people, and for other purposes.

S. CON. RES. 3

At the request of Mr. MILLER, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. Con. Res. 3, a concurrent resolution recognizing, applauding, and supporting the efforts of the Army Aviation Heritage Foundation, a nonprofit organization incorporated in the State of Georgia, to utilize veteran aviators of the Armed Forces and former Army Aviation aircraft to inspire Americans and to ensure that our Nation's military legacy and heritage of service are never forgotten.

S. RES. 140

At the request of Mr. CAMPBELL, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. Res. 140, a resolution designating the week of August 10, 2003, as ''National Health Center Week''.

AMENDMENT NO. 865

At the request of Mr. DORGAN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of amendment No. 865 proposed to S. 14, a bill to enhance the energy security of the United States, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HOLLINGS (for himself and Mr. STEVENS):

S. 1218. A bill to provide for Presidential support and coordination of interagency ocean science programs and development and coordination of a comprehensive and integrated United States research and monitoring program; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, today I am introducing legislation to spur the advent of an exciting new field of research, one that explores the role of the oceans in human health. I am pleased to be joined in this effort by the distinguished Senator from Alaska, TED STEVENS, who is cosponsoring this bill. The Oceans and Human Health Act proposes to establish a national interagency program that will coordinate research efforts and ensure the availability of an adequate Federal investment in this critical area. It also would establish a program at the National Oceanic and Atmospheric Administration to strengthen and coordinate its work in this very important arena.

In recent years, we have gained a renewed appreciation for the importance of the ocean to our future and well-being. We now recognize that human health is one are in which the oceans exert major influences that are both positive and negative. However, studying this relationship is challenging. To be successful, a research program must integrate disciplines, bringing together oceanographers and biomedical researchers to better understand marine processes, reduce public health risks and enhance our biomedical capabilities. Pioneering scientists are needed to tackle marine environmental issues that affect human and marine life alike, such as ocean pollution, marine pathogens and potential drug discoveries. A number of Federal agencies would share responsibility and expertise for such a program, requiring that capabilities be harnessed across such diverse entities as the National Oceanic and Atmospheric Administration, the National Science Foundation and the National Institute for Environmental Health Sciences.

The rich biodiversity of marine organisms represent an important biomedical resource, a promising source of novel compounds with therapeutic potential, and a potentially significant contribution to the national economy. A 1999 National Research Council report, From Monsoons to Microbes, noted that nature has been the traditional source of new pharmaceuticals and found that over 50 percent of the marketed drugs are extracted from natural sources or produced using natural products. Virtually every type of life that exists on this planet is found in the sea and many types of plants and animals are exclusively marine. While the oceans are a repository for much of our biodiversity, little of it has been catalogued or studied. One important aspect that we have yet to explore is the potential of marine life to produce chemicals for treating diseases. There are only three marine compounds now in clinical use—and these were developed in the 1950s. While there are some new compounds in the pipeline, we need to speed this effort up to ensure we get more approved sooner.

But our relationship to the sea also has a darker side. The oceans drive climate and weather factors causing severe weather events and shifts in temperature and rainfall patterns. These changes in turn affect the density and distribution of disease-causing organisms and the ability of public health systems to address them. In addition, the oceans act as a route of exposure for human disease and illnesses through ingestion of contaminated seafood and direct contact with seawater containing toxins and disease-causing organisms. We need to know more about how our health is affected by the

marine environment. We must ensure that the sea maintains its capacity to sustain itself without becoming a ''Dead Zone.'' We must find ways to monitor and reduce the occurrence of ocean toxins that kill marine mammals and taint seafood. As with cancer, our goal must be understanding and prevention, rather than relying exclusively on treatment.

Research on the health of marine organisms, including marine mammals and other sentinel species, can assist scientists in their efforts to investigate and understand human physiology and biochemical processes, as well as providing a means for monitoring the health of marine ecosystems. Unfortunately such research often does not fall clearly within a single federal agency's mission. The dolphins of Florida's Indian River Lagoon provide an example of a marine population that is the victim of contaminated habitat and food. The result is unusually high mortality rates and harmful health effects. Not only is the population at risk, but it provides a clear indicator of environmental pollution concerns for its human neighbors. We must harness the sciences of genomics, forensics and ecology and put them to work in the marine world, creating an ocean Center for Disease Control—a ''CDC for the Oceans''.

An exciting example of this new interdisciplinary and medically-oriented approach to ocean research can be found at NOAA's two marine laboratories in Charleston, including a unique research partnership among NOAA, the National Institute for Standards and Technology (NIST), the State of South Carolina, the Medical University of South Carolina, and the College of Charleston, formerly known as the Marine Environmental Health Research Laboratory, and now referred to as the Hollings Marine Laboratory (HML). HML works with a variety of Federal, State, and academic partners around the Nation and is on the front lines of discovery and prevention, particularly in the emerging field of marine genomics. They are hard at work on today's important public and marine environmental health issues. Their exciting dolphin health research will for the first time utilize a traditional medical approach to diagnosing and documenting dolphin health, which will help us learn more about dolphins in the wild than we have ever known. In addition, HML scientists, important partners in the Coral Disease and Health Consortium, are already analyzing samples from the two Florida coral reefs ''quarantined'' by NOAA today because of a fast-spreading coral disease.

The HML epitomizes the variety of important disciplines that must work side-by-side if we are to make progress in this area. It is home to cutting-edge research involving algal toxins, natural products with potential pharmaceutical applications, and viral and bacterial pathogens that cause disease in marine animals, with potential links to human illness and disease processes and natural product chemistry. Scientists at HML and its partner NOAA facility use unique medical tools such as nuclear magnetic resonators to help ''map'' cellular and genetic structure of marine organisms and have developed methods for detecting pesticides in water, sediments, fish and marine mammals that may potentially affect both the health of the marine environment and human health. They also are developing exposure, toxicology and disease models to assess their effects on a variety of marine organisms. Their work will better define ocean health and bridge the gap with existing human health models.

A number of Federal agencies are now recognizing the importance of understanding health-related ocean research and to make needed investments. Last year, initiatives began both through our ocean agency, the National Oceanic and Atmospheric Administration, as well as two of our Federal research institutions, the National Institute for Environmental Health Sciences, NIEHS, and the National Science Foundation, NSF.

This past year, the National Oceanic and Atmospheric Administration, NOAA, received appropriations of $8 million to develop an oceans and human health initiative. Within NOAA, many programs and laboratories perform research and related activities that could contribute significantly to a national research effort, but such efforts have not realized their potential. Establishment of this coordinated, interdisciplinary program consisting of nationally-recognized research centers and an external interdisciplinary research grant program will enhance the NOAA program. In addition, last November, the National Institute for Environmental Health Sciences, NIEHS, National Science Foundation, NSF, invited applications for research programs to explore the relationship between marine processes and public health. The joint initiative commits $6 million annually to establish centers of excellence focusing on harmful algal blooms, water and vector-borne diseases, and marine pharmaceuticals and probes.

Taken together, the NIEHS-NSF and NOAA research initiatives offer an excellent basis for building a comprehensive national program. In addition, a number of other Federal agencies are poised to make significant contributions.

The Oceans and Human Health Act provides the legislative framework for a coordinated national investment to improve understanding of marine ecosystems, address marine public health problems and tap into the ocean's potential contribution to new biomedical treatments and advances. The legislation would amend the 1976 Science and Technology Act to clarify the role of the National Science and Technology Council in coordinating interagency research efforts. It would also establish an interagency committee on oceans and human health to develop a research plan and coordinate participation by NOAA, NSF, NIEHS and other agencies. Governing NOAA's contribution to the interagency effort, the bill would establish a new NOAA program on oceans and human health. At the heart of this legislation and key to its success is our commitment to building new partnerships—among Federal health, science and ocean agencies, among diverse scientific disciplines, and among academic researchers and government experts.

A more detailed summary of the legislation follows:

SECTION-BY-SECTION ANALYSIS OCEANS AND HUMAN HEALTH ACT

The Oceans and Human Health Act would authorize the establishment of a coordinated federal research program to aid in understanding and responding to the role of oceans in human health. The bill would establish a Federal interagency Oceans and Human Health initiative coordinated through the National Science and Technology Council, NSTC, as well as create an Oceans and Human Health program at the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA). The bill also directs the Secretary of Commerce to establish a coordinated public information and outreach program with the Food and Drug Administration, FDA, the Environmental Protection Agency, EPA, the Centers for Disease Control CDC, and the States to provide information on potential ocean-related human health risks.

SECTION 1. SHORT TITLE

Section 1 provides the short title of the Act is the ''Oceans and Human Health Act.''

SECTION 2. FINDINGS

Section 2 sets forth findings and purposes for the Act.

SECTION 3. NATIONAL SCIENCE AND TECHNOLOGY COUNCIL

Section 3 would amend the National Science and Technology Policy, Organization, and Priorities Act of 1976, 42 U.S.C. 6616, to codify the responsibilities of the National Science and Technology Council NSTC, which was established by executive Order in 1993, and whose functions have superceded the Federal Coordinating Council for Science, Engineering, and Technology, FCCSET, the functions of which were transferred to the President under a 1977 executive order. The Act is also amended to clarify the director of the Office of Science and Technology Policy, OSTP, serves as chair of the NSTC.

Subsection b replaces existing section 401 of the Act (42 U.S.C. 6651) with new text specifying NSTC functions, which focus on prompting domestic and international coordination among government, industry and university scientists. Subsection b sets forth the following as NSTC functions: 1. promote interagency efforts and communication with respect to the planning and administration of Federal scientific, engineering, and technology program. 2. identify research needs; achieve more effective use of Federal facilities and resources; 3. further international cooperation in science, engineering and technology; and 4. develop long-range and coordinated research plans. The NSTC is directed to carry out these and other related duties with the assistance of the Federal agencies represented on the Council. This subsection also authorizes the NSTC Chairman to establish standing committees and working

groups to assist in developing interagency plans, conduct studies and make reports for the Chairman.

SECTION 4. INTERAGENCY OCEANS AND HUMAN HEALTH RESEARCH PROGRAM

Interagency Program. Section 4 provides for the establishment of an Interagency Oceans and Human Health Research Program, Interagency OHH Program, to be coordinated and supported by the NSTC. Subsection (a) directs the NSTC to establish a Committee on Oceans and Human Health comprised of at least one representative from NOAA, the National Science Foundation, NSF, the National Institutes of Health, NIH, CDC, EPA, FDA, Department of Homeland Security, DHS, and other agencies and department deemed appropriate by the NSTC. This section also provides for the biennial selection of a Chairman of the Committee, who shall represent an agency that contributes substantially to the Interagency OHH Program.

10-Year Implementation Plan. Subsection b directs the NSTC, through the Committee on the Oceans and Human Health, to submit to Congress within one year of enactment a 10-year implementation plan for coordinated federal activities under the Interagency OHH Program. In developing the plan, the Committee is required to consult with the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia. The implementation plan will complement the ongoing activities of NOAA, NSF, the NIH National Institute of Environmental Health Sciences, NIEHS, and other departments and agencies, and: 1. establish the goals and priorities for Federal research related to oceans and human health; 2. describe specific activities required to achieve such goals; 3. identify relevant Federal programs and activities that would contribute to the Interagency OHH Program; 4. consider and use reports and studies conducted by Federal agencies and departments, the National Research Council, the Ocean Research Advisory Panel, the U.S. Commission on Ocean Policy and other entities; 5. make recommendations for the coordination of national and international programs; and 6. estimate Federal funding for research activities to be conducted under the Interagency OHH Program.

Scope of Interagency Program. Subsection c outlines the scope of the Interagency OHH Program, as follows:

1. Interdisciplinary and coordinated research and activities to improve our understanding of how ocean processes and marine organisms can relate to human health and contribute to medicine and research;

2. Coordination with the National Ocean Leadership Council (established under 10 U.S.C. 7902(a)) to ensure any ocean and coastal observing system provides information necessary to monitor, predict and reduce marine public health problems;

3. Development of new technologies and approaches for detecting and reducing hazards to human health from ocean sources and to strengthen understanding of the value of marine biodiversity to biomedicine; and

4. Support for scholars, trainees and education opportunities that encourage a multidisciplinary approach to exploring the diversity of life in the oceans.

SECTION 5. NOAA OCEANS AND HUMAN HEALTH PROGRAM

Establishment of NOAA Program. Section 5 would establish a NOAA program on Oceans and Human Health that would coordinate NOAA activities with the Interagency OHH Program. Subsection (a) directs the Secretary of Commerce to develop an Oceans and Human Health Program, consistent with the interagency program developed under Section 4, that will coordinate and implement research and activities within NOAA related to the role of the oceans in human health. In establishing the program, the Secretary is required to consult with other Federal agencies conducting integrated ocean health research or research in related areas, including the CDC, NSF, and HIEHS. The NOAA Oceans and Human Health Program will provide support for the following components: 1. a Program and Research Coordination Office; 2. an Advisory Panel; 3. National Center(s) of Excellence; 4. Research grants and 5. Distinguished scholars and traineeships.

Program Office. Subsection (b) directs the Secretary to establish a program to coordinate oceans and human health-related research and activities within NOAA and to carry out the elements of the program. In cooperation with the Oceans and Human Health Advisory Panel established under subsection (c), the program office will serve as liaison with academic institutions and other agencies participating in the Interagency OHH Program established under Section 3.

Advisory Panel. Under subsection (c), the Secretary will establish an Oceans and Human Health Advisory Panel to assist in the development and implementation of the NOAA Oceans and Human Health Program. Membership of the Advisory Group will include a balanced representation of individuals with multi-disciplinary expertise in the marine and biomedical sciences. The subsection provides that Federal Advisory Committee Act, 5 U.S.C. App. 1, shall not apply to the Panel.

Centers of Excellence. Subsection (d) provides that the Secretary shall, through a competitive process, establish and support Centers of Excellence that strengthen NOAA's capabilities to carry out programs and activities related to the ocean's role in human health. These NOAA Centers of Excellence shall complement and be in addition to any centers of excellence for oceans and human health established through NSF or NIEHS. Centers selected for funding and support under Section 4 would focus on areas related to NOAA missions, including: 1. use of marine organisms as indicators for marine environmental health; 2. ocean pollutants; 3. marine toxins and pathogens, harmful algal blooms, seafood testing, drug discovery, biology and pathobiology of marine mammals; and 4. such disciplines as marine genomics, marine environmental microbiology, ecological chemistry and conservation medicine. The Secretary will consider the need for geographic representation and will encourage proposals that have strong scientific and interdisciplinary merit.

Research Grants. Subsection (e) authorizes the Secretary of Commerce to provide grants for research and projects that explore the relationship between the oceans and human health, and that complement or strengthen NOAA-related programs and activities. In implementing this subsection, the Secretary is directed to consult with the Oceans and Human Health Advisory Panel and the National Sea Grant College Program, and may work cooperatively with other agencies in the Intergency OHH Program to establish joint criteria for such research projects. This subsection specifies that the grants shall be awarded through a peer-review or other competitive process and that such a process may be conducted jointly with other agencies participating in the Interagency OHH Program or under the National Oceanographic Partnership Program, 10 U.S.C. 7901.

Distinguished Scholars. Subsection (f) directs the Secretary to provide financial assistance to support distinguished scholars working in collaboration with NOAA scientists and facilities. The Secretary is also authorized to establish a training program, in consultation with NIEHS and NSF, for scientists early in their careers who are interested in oceans and human health.

SECTION 6. PUBLIC INFORMATION AND RISK ASSESSMENT

This section directs the Secretary of Commerce, in consultation with the CDC, FDA, EPA, and the States, to design and implement a national public information and outreach program on potential ocean-related human health risks. The outreach program will collect and analyze information, disseminate the results, to relevant Federal, State, public, industry or other interested parties, provide advice regarding precautions against illness or hazards, and make recommendations on observing systems that would support the program.

Subsection (b) requires the Secretary, in consultation with the same agencies, to assess health hazards associated with the human consumption of seafood. Under this subsection, the Secretary, in consultation with CDC, FDA, EPA, and the states, would assess risks associated with domestically harvested and processed seafood as compared with imported seafood harvested and processed outside the United States; commercially harvested seafood as compared with recreational and subsistence harvest; and contamination due to handling and preparation of seafood.

SECTION 7. AUTHORIZATION OF APPROPRIATIONS

Section 7 provides the authorization of appropriations for the NOAA Oceans and Human Health Program established under Section 5, and the public information and risk assessment program established under Section 6.

Subsection (a) provides that there are authorized to be appropriated to the Secretary of Commerce to carry out the program under Section 5, $8,000,000 for FY 2003, $15,000,000 for FY 2004, and $20,000,000 for FY2005–2007.

Subsection (b) provides authorizations of appropriations of $5,000,000 for each of fiscal years 2004 through 2007 for the public information and risk assessment program established under Section 6.

I am extremely proud to sponsor this legislation, and hope that this will mark the beginning of a new century of ocean research that will reveal how integral and important the oceans are to our daily lives and our health, whether we live by the edge of the sea or in the heartland.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1218

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Oceans and Human Health Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) The rich biodiversity of marine organisms provides society with an essential biomedical resource, a promising source of novel compounds with therapeutic potential, and a potentially important contribution to the national economy.

(2) The diversity of ocean life and research on the health of marine organisms, including marine mammals and other sentinel species, helps scientists in their efforts to investigate and understand human physiology and biochemical processes, as well as providing a

means for monitoring the health of marine ecosystems.

(3) The oceans drive climate and weather factors causing severe weather events and shifts in temperature and rainfall patterns that affect the density and distribution of disease-causing organisms and the ability of public health systems to address them.

(4) The oceans act as a route of exposure for human disease and illnesses through ingestion of contaminated seafood and direct contact with seawater containing toxins and disease-causing organisms.

(5) During the past two decades, the incidence of harmful blooms of algae has increased around the world, contaminating shellfish, causing widespread fish kills, threatening marine environmental quality and resulting in substantial economic losses to coastal communities.

(6) Existing Federal programs and resources support research in a number of these areas, but gaps in funding, coordination, and outreach have impeded national progress in addressing ocean health issues.

(7) National investment in a coordinated program of research and monitoring would improve understanding of marine ecosystems, allow prediction and prevention of marine public health problems and assist in realizing the potential of the oceans to contribute to the development of effective new treatments of human diseases and a greater understanding of human biology.

(b) PURPOSES.—The purposes of this Act are to provide for—

(1) Presidential support and coordination of interagency ocean science programs; and

(2) development and coordination of a comprehensive and integrated United States research and monitoring program that will assist this Nation and the world to understand, use and respond to the role of the oceans in human health.

SEC. 3. NATIONAL SCIENCE AND TECHNOLOGY COUNCIL.

(a) DIRECTOR OF OFFICE OF SCIENCE AND TECHNOLOGY POLICY TO CHAIR COUNCIL.—Section 207(a) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6616(a)) is amended—

(1) by striking ''CHAIRMAN OF FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY'' in the subsection heading and inserting ''CHAIR OF THE NATIONAL SCIENCE AND TECHNOLOGY COUNCIL''; and

(2) by striking paragraph (1) and inserting the following:

''(1) serve as Chair of the National Science and Technology Council; and''.

(b) FUNCTIONS.—Section 401 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6651) is amended to read as follows:

''SEC. 401. FUNCTIONS OF COUNCIL.

''(a) IN GENERAL.—The National Science and Technology Council (hereinafter referred to as the 'Council') shall consider problems and developments in the fields of science, engineering, and technology and related activities affecting more than one Federal agency, and shall recommend policies and other measures designed to—

''(1) provide more effective planning and administration of Federal scientific, engineering, and technology programs;

''(2) identify research needs, including areas requiring additional emphasis;

''(3) achieve more effective use of the scientific, engineering, and technological resources and facilities of Federal agencies, including elimination of unwarranted duplication; and

''(4) further international cooperation in science, engineering and technology.

''(b) COORDINATION.—The Council may be assigned responsibility for developing long-range and coordinated plans for scientific and technical research which involve the participation of more than 2 agencies. Such plans shall—

''(1) identify research approaches and priorities which most effectively advance scientific understanding and provide a basis for policy decisions;

''(2) provide for effective cooperation and coordination of research among Federal agencies; and

''(3) encourage domestic and, as appropriate, international cooperation among government, industry and university scientists.

''(c) OTHER DUTIES.—The Council shall perform such other related advisory duties as shall be assigned by the President or by the Chair of the Council.

''(d) ASSISTANCE OF OTHER AGENCIES.—For the purpose of carrying out the provisions of this section, each Federal agency represented on the Council shall furnish necessary assistance to the Council. Such assistance may include—

''(1) detailing employees to the Council to perform such functions, consistent with the purposes of this section, as the Chairman of the Council may assign to them; and

''(2) undertaking upon the request of the Chair, such special studies for the Council as come within the scope of authority of the Council.

''(e) STANDING COMMITTEES; WORKING GROUPS.—For the purpose of developing interagency plans, conducting studies, and making reports as directed by the Chairman, standing committees and working groups of the Council may be established.''.

SEC. 4. INTERAGENCY OCEANS AND HUMAN HEALTH RESEARCH PROGRAM.

(a) ESTABLISHMENT OF COMMITTEE.—

(1) The National Science and Technology Council shall coordinate and support a national research program to improve understanding of the role of the oceans in human health. In planning the program, the Council shall establish a Committee on Oceans and Human Health that shall consist of representatives from those agencies with programs or missions that could contribute to or benefit from the program. The Committee shall consist of at least one representative from—

(A) the National Oceanic and Atmospheric Administration;

(B) the National Science Foundation;

(C) the National Institute of Environmental Health Sciences and other institutes within the National Institutes of Health;

(D) the Centers for Disease Control;

(E) the Environmental Protection Agency;

(F) the Food and Drug Administration;

(G) the Department of Homeland Security; and

(H) such other agencies and departments as the Council deems appropriate.

(2) The members of the Committee biennially shall select one of its members to serve as Chair. The Chair shall be knowledgeable and experienced with regard to the administration of scientific research programs, and shall be a representative of an agency that contributes substantially, in terms of scientific research capability and budget, to the interagency program.

(b) IMPLEMENTATION PLAN.—Within one year after the date of enactment of this Act, the Chair of the National Science and Technology Council, through the Committee on the Oceans and Human Health, shall develop and submit to the Congress a plan for coordinated Federal activities under the program. In developing the plan, the Committee will consult with the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia. Such plan will build on and complement the ongoing activities of the National Oceanic and Atmospheric Administration, the National Science Foundation, the National Institute of Environmental Health Sciences, and other departments and agencies and shall—

(1) establish, for the 10-year period beginning in the year it is submitted, the goals and priorities for Federal research which most effectively advance scientific understanding of the connections between the oceans and human health, provide usable information for the prediction and prevention of marine public health problems and use the biological potential of the oceans for development of new treatments of human diseases and a greater understanding of human biology;

(2) describe specific activities required to achieve such goals and priorities, including establishment of national centers of excellence, the funding of competitive research grants, ocean and coastal observations, training and support for scientists, and participation in international research efforts;

(3) identify and address, as appropriate, relevant programs and activities of the Federal agencies and departments that would contribute to the program;

(4) consider and use, as appropriate, reports and studies conducted by Federal agencies and departments, the National Research Council, the Ocean Research Advisory Panel, the Commission on Ocean Policy and other entities;

(5) make recommendations for the coordination of program activities with ocean and human health-related activities of other national and international organizations; and

(6) estimate Federal funding for research activities to be conducted under the program.

(c) PROGRAM SCOPE.—The program shall include the following activities related to the role of oceans in human health:

(1) Interdisciplinary research among the ocean and medical sciences, and coordinated research and activities to improve understanding of processes within the ocean that may affect human health and to explore the potential contribution of marine organisms to medicine and research, including—

(A) vector- and water-borne diseases of humans and marine organisms, including marine mammals and fish;

(B) harmful algal blooms;

(C) marine-derived pharmaceuticals;

(D) marine organisms as models for biomedical research and as indicators of marine environmental health;

(E) marine environmental microbiology;

(F) bioaccumulative and endocrine-disrupting chemical contaminants; and

(G) predictive models based on indicators of marine environmental health.

(2) Coordination with the National Ocean Research Leadership Council (10 U.S.C. 7902(a)) to ensure that any integrated ocean and coastal observing system provides information necessary to monitor, predict and reduce marine public health problems including—

(A) baseline observations of physical ocean properties to monitor climate variation;

(B) measurement of oceanic and atmospheric variables to improve prediction of severe weather events;

(C) compilation of global health statistics for analysis of the effects of oceanic events on human health;

(D) documentation of harmful algal blooms; and

(E) development and implementation of sensors to measure biological processes, acquire health-related data on biological populations and detect contaminants in marine waters and seafood.

(3) Development through partnerships among Federal agencies, States, or academic institutions of new technologies and approaches for detecting and reducing hazards

to human health from ocean sources and to strengthen understanding of the value of marine biodiversity to biomedicine, including—

(A) genomics and proteomics to develop genetic and immunological detection approaches and predictive tools and to discover new biomedical resources;

(B) biomaterials and bioengineering;

(C) in situ and remote sensors to detect and quantify contaminants in marine waters and organisms and to identify new genetic resources;

(D) techniques for supplying marine resources, including chemical synthesis, culturing and aquaculturing marine organisms, new fermentation methods and recombinant techniques; and

(E) adaptation of equipment and technologies from human health fields.

(4) Support for scholars, trainees and education opportunities that encourage an interdisciplinary and international approach to exploring the diversity of life in the oceans.

SEC. 5. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OCEANS AND HUMAN HEALTH PROGRAM.

(a) ESTABLISHMENT.—As part of the interagency program planned and coordinated under section 4, the Secretary of Commerce shall establish an Oceans and Human Health Program to coordinate and implement research and activities of the National Oceanic and Atmospheric Administration related to the role of the oceans in human health. In establishing the program, the Secretary shall consult with other Federal agencies conducting integrated oceans and human health research and research in related areas, including the Centers for Disease Control, the National Science Foundation, and the National Institute of Environmental Health Sciences. The Oceans and Human Health Program shall provide support for—

(1) a program and research coordination office;

(2) an advisory panel;

(3) one or more National Oceanic and Atmospheric Administration national centers of excellence;

(4) research grants; and

(5) distinguished scholars and traineeships.

(b) PROGRAM OFFICE.—The Secretary shall establish a program office to identify and coordinate oceans and human health-related research and activities within the National Oceanic and Atmospheric Administration and carry out the elements of the program. The program office will provide support for administration of the program and, in cooperation with the oceans and human health advisory panel, will serve as liaison with academic institutions and other agencies participating in the interagency oceans and human health research program planned and coordinated under section 3.

(c) ADVISORY PANEL.—The Secretary shall establish an oceans and human health advisory panel to assist in the development and implementation of the Oceans and Human Health Program. Membership of the advisory group shall provide for balanced representation of individuals with multi-disciplinary expertise in the marine and biomedical sciences. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the oceans and human health advisory panel.

(d) NATIONAL CENTERS.—

(1) The Secretary shall identify and provide financial support through a competitive process to develop, within the National Oceanic and Atmospheric Administration, for one or more centers of excellence that strengthen the capabilities of the Administration to carry out programs and activities related to the oceans' role in human health. Such centers shall complement and be in addition to the centers established by the National Science Foundation and the National Institute of Environmental Health Sciences.

(2) The centers shall focus on areas related to agency missions, including use of marine organisms as indicators for marine environmental health, ocean pollutants, marine toxins and pathogens, harmful algal blooms, seafood testing, drug discovery, and biology and pathobiology of marine mammals, and on disciplines including marine genomics, marine environmental microbiology, ecological chemistry and conservation medicine.

(3) In selecting centers for funding, the Secretary will consider the need for geographic representation and give priority to proposals with strong interdisciplinary scientific merit that encourage educational opportunities and provide for effective partnerships among the Administration, other Federal entities, State, academic, medical, and industry participants.

(e) RESEARCH GRANTS.—

(1) The Secretary is authorized to provide grants of financial assistance for critical research and projects that explore the relationship between the oceans and human health and that complement or strengthen Administration programs and activities related to the ocean's role in human health. The Secretary shall consult with the oceans and human health advisory panel established under subsection (c) and the National Sea Grant College Program and may work cooperatively with other agencies participating in the interagency program under section 3 to establish joint criteria for such research and projects.

(2) Grants under this subsection shall be awarded through a peer-review process that may be conducted jointly with other agencies participating in the interagency program established in section 3 or under the National Oceanographic Partnership Program under section 7901 of title 10, United States Code.

(f) DISTINGUISHED SCHOLARS AND TRAINEESHIPS.—

(1) The Secretary shall designate and provide financial assistance to support distinguished scholars from academic institutions, industry or State governments for collaborative work with scientists and facilities of the Administration.

(2) In consultation with the Directors of the National Institutes of Health and the National Science Foundation, the Secretary of Commerce may establish a program to provide training and experience to scientists at the beginning of their careers who are interested in the role of the oceans in human health.

SEC. 6. PUBLIC INFORMATION AND OUTREACH.

(a) ESTABLISHMENT.—The Secretary of Commerce, in consultation with the Centers for Disease Control, the Food and Drug Administration, the Environmental Protection Agency and the States, shall design and implement a national public information and outreach program on potential ocean-related human health risks, including health hazards associated with the human consumption of seafood. Under such program, the Secretary shall—

(1) collect and analyze information on ocean-related health hazards and illnesses, including information on the number of individuals affected, causes and geographic location of the hazard or illness;

(2) disseminate the results of the analysis to any appropriate Federal or State agency, the public, involved industries, and other interested persons;

(3) provide advice regarding precautions that may be taken to safeguard against the hazard or illness; and

(4) assess and make recommendations for observing systems to support the program.

(b) SEAFOOD SAFETY.—To address health hazards associated with human consumption of seafood, the Secretary, in consultation with the Centers for Disease Control, the Food and Drug Administration, the Environmental Protection Agency and the States, shall assess risks related to—

(1) seafood that is domestically harvested and processed as compared with imported seafood that is harvested and processed outside the United States;

(2) seafood that is commercially harvested and processed as compared with that harvested for recreational or subsistence purposes and not prepared commercially; and

(3) contamination originating from certain practices that occur both prior to and after sale of seafood to consumers, especially those connected to the manner in which consumers handle and prepare seafood.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) NOAA OCEANS AND HUMAN HEALTH PROGRAM.—There are authorized to be appropriated to the Secretary of Commerce to carry out the NOAA Oceans and Human Health program established under section 5, $8,000,000 for fiscal year 2004, $15,000,000 for fiscal year 2005, and $20,000,000 annually for fiscal year 2006 through fiscal year 2008.

(b) PUBLIC INFORMATION.—There are authorized to be appropriated to the Secretary to carry out the public information and outreach program established under section 6, $5,000,000 for each of fiscal years 2004 through 2007.

By Mr. EDWARDS (for himself, Mr. SMITH, and Mrs. CLINTON):

S. 1219: A bill to amend the national and Community Service Act of 1990 to establish a Community Corps, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. EDWARDS. Mr. President, today I rise to introduce the School Service Act of 2003.

Across our Nation, as more and more people participate in national service programs, young people, too, are making real contributions to their communities. These students are learning lessons that are more valuable than any taught in the classroom, lessons about what it means to be a part of a community and what it means to be an American.

In my home State, schools and communities have seen the benefit of student service. High school kids have built community centers in run-down neighborhoods. They've cleaned up polluted ponds. They've helped small children learn to read, and offered comfort to the elderly and sick.

And the students have learned that their efforts matter, a lesson that they'll carry with then their whole lives. The research shows this. In one study, adults who had completed service projects more than 15 years earlier were still more likely to be volunteers and voters than adults who hadn't. In another program, kids who served had a 60 percent lower drop-out rate and 18 percent lower rate of school suspension than kids who didn't.

I applaud these students' dedication, as well as the dedication of the teachers, parents and administrators who support them. But we should do more than simply applaud these efforts—we

should provide the resources to support and expand them.

That is why I am introducing, together with Senator GORDON SMITH and Senator CLINTON, the School Service Act of 2003. The proposal is very simple: We say to a limited number of States and cities, if you have schools that will make sure students engage in high-quality service before graduation, we will support those schools' efforts. All that we ask is that you ensure that students are engaging in meaningful service with real benefits to communities. We want kids seeing these experiences not as another chore, but as an exciting initiation into long lives of active citizenship.

Here in Congress, it is our responsibility to give opportunities for service to our young people. We do not want to create a new national mandate, and we will not require any State or city to do anything. But for those State and school districts with schools that are ready, we ought to make sure every child has the opportunity and the responsibility to engage in service. When we do, our country will be richly rewarded in the years and decades to come.

By Mr. ALLARD (for himself, , Mr. WYDEN, Mr. SMITH, Mr. INOUYE, Mr. AKAKA, Mr. COLEMAN, Mrs. HUTCHISON, and Mr. CAMPBELL):

S. 1220. A bill to amend title XVIII of the Social Security Act to extend reasonable cost contracts under the medicare program, to expand the area in which plans offered under such contracts may operate, to apply certain provisions of the Medicare+Choice program to such plans, and for other purposes; to the Committee on Finance.

Mr. ALLARD. Mr. President, currently approximately 19,500 Colorado seniors are beneficiaries of Medicare health plans called ''cost contracts.'' Under current law, cost contracts will expire. Along with Senator WYDEN, Senator SMITH, Senator INOUYE, Senator AKAKA, and Senator COLEMAN, I am pleased to introduce the Medicare Cost Contract Extension and Refinement Act of 2003 to refine and to allow seniors to continue using these valued health plans.

Medicare cost contracts are managed care plans that are reimbursed at the cost of providing health benefits. Currently, seniors have three Medicare plans to choose from: basic Medicare fee-for-service, Medicare+Choice, and Medicare cost contracts.

Cost contract plans offer more benefits than basic Medicare and is available in more areas than Medicare+Choice. Cost contracts also offer lower out-of-pocket expenses and more benefits than supplemental Medigap, such as preventive care and prescription drug benefits. In addition, cost contract premiums cover Medicare deductibles and additional benefits not covered by basic Medicare. Further, for the costs of a normal Medicare fee-for-service copayment, seniors with cost contracts can use any Medicare provider whether they participate in the health plan's network.

Cost contracts are especially important in rural Colorado. Of the 19,500 Coloradans with cost contract plans, about 90 percent live in rural Colorado, where few basic Medicare and Medicare+Choice providers operate. If Medicare cost contracts are eliminated, then thousands of seniors will be forced into these other Medicare programs.

Seniors with cost contracts value them. According to the 1999 Medicare Managed Care Consumer Assessment of Health Plans Study, conducted by the U.S. Department of Health and Human Services, Medicare beneficiaries gave Medicare cost contract health insurers higher ratings than non-cost contract providers. Beneficiaries noted cost contracting HMOs solved problems, provided care, and provided customer service better than the majority of non-cost contracting providers. These ratings demonstrate that cost contract plans provide the quality service seniors want and need.

Unfortunately, under current law cost contracts soon will terminate. In 1997, in an effort to refine Medicare+Choice, Congress passed the Balanced Budget Act. Among other provisions, this bill terminated the Medicare cost contract program effective December 31, 2002. To prevent the termination of this valuable plan, in 1999 I introduced legislation to extend cost contracts. That year Congress passed the Balanced Budget and Refinement Act, which extended cost contracts for two years through 2004.

Congress should extend Medicare cost contracts further. Legislation I am introducing, the Cost Contracting Extension and Refinement Act, would accomplish this by extending by ten years the cost contract sunset date of December 31, 2004 to December 31, 2014.

While the goal of Congress in the Balanced Budget Act of 1997 was to provide an alternative to basic Medicare through Medicare+Choice, Medicare+Choice has not yet met this goal in rural Colorado. Until Medicare+Choice coverage is readily available to rural cost contract recipients, Congress should extend the current cost contract sunset for an additional 10 years.

This legislation would provide another reform. It would apply certain existing requirements under the Medicare+Choice program to Medicare cost contract plans in order to allow better administration, education, and protections to patients, providers, and insurers. The legislation would allow beneficiaries to be informed and educated about the option of cost contracts, apply quality assurance requirements, prevent plans from discriminating against certain patients by offering lower premiums, and prohibit States from taxing cost contract premiums. These provisions help refine and strengthen the Medicare cost contract program, and they help streamline the dual administration of Medicare+Choice and cost contracts.

Last, the Medicare Cost Contract Extension and Refinement Act would allow certain health plans, called group model health plans, to offer Medicare patients a cost contract plan. These group model health plans have traditionally been shown to provide care efficiently and at a cost lower than the costs that would be incurred if the services are furnished under the Medicare fee-for-service program. Group health plans are health insurers that offer health care through providers that are employed by the insurer, such as the Kaiser Foundation Health Plan. If, for example, Kaiser provides Medicare patients the cost contract option, then Colorado's approximate 50,000 seniors, who are now enrolled in Kaiser's Medicare+Choice plans, would be eligible to obtain a cost contract plan.

Medicare beneficiaries deserve a choice in how they receive their health care. Congress should allow one of these choices to remain Medicare cost contracts. On behalf of the 19,500 Colorado Medicare beneficiaries who obtain their health care from cost contract plans, I am pleased to sponsor the Medicare Cost Contract Extension Act.

I ask unanimous consent that the text of this legislation be printed in the RECORD

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1220

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Cost Contract Extension and Refinement Act of 2003''.

SEC. 2. EXTENSION OF REASONABLE COST CONTRACTS.

(a) TEN-YEAR EXTENSION.—Section 1876(h)(5)(C) of the Social Security Act (42 U.S.C. 1395mm(h)(5)(C)) is amended by striking ''2004'' and inserting ''2014''.

(b) TEN-YEAR EXTENSION OF PERIOD DURING WHICH COST CONTRACTS MAY EXPAND SERVICE AREAS.—Section 1876(h)(5)(B)(i) of the Social Security Act (42 U.S.C. 1395mm(h)(5)(B)(i)) is amended by striking ''2003'' and inserting ''2013''.

SEC. 3. APPLICATION OF CERTAIN MEDICARE+CHOICE REQUIREMENTS TO COST CONTRACTS EXTENDED OR RENEWED AFTER 2003.

Section 1876(h) of the Social Security Act (42 U.S.C. 1395mm(h)), as amended by subsections (a) and (b), is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following new paragraph:

''(5)(A) Any reasonable cost reimbursement contract with an eligible organization under this subsection that is extended or renewed on or after the date of enactment of the Medicare Cost Contract Extension and Refinement Act of 2003 or that is entered into pursuant to paragraph (6)(C) for plan years beginning on or after January 1, 2004, shall provide that the provisions of the Medicare+Choice program under part C described in subparagraph (B) shall apply to

such organization and such contract in a substantially similar manner as such provisions apply to Medicare+Choice organizations and Medicare+Choice plans under such part.

''(B) The provisions described in this subparagraph are as follows:

''(i) Section 1851(d) (relating to the provision of information to promote informed choice).

''(ii) Section 1851(h) (relating to the approval of marketing material and application forms).

''(iii) Section 1852(a)(3)(A) (regarding the authority of organizations to include supplemental health care benefits under the plan subject to the approval of the Secretary).

''(iv) Paragraph (1) of section 1852(e) (relating to the requirement of having an ongoing quality assurance program) and paragraph (2)(B) of such section (relating to the required elements for such a program).

''(v) Section 1852(e)(4) (relating to treatment of accreditation).

''(vi) Section 1852(j)(4) (relating to limitations on physician incentive plans).

''(vii) Section 1854(c) (relating to the requirement of uniform premiums among individuals enrolled in the plan).

''(viii) Section 1854(g) (relating to restrictions on imposition of premium taxes with respect to payments to organizations).

''(ix) Section 1856(b)(3) (relating to relation to State laws).

''(x) Section 1857(i) (relating to Medicare+Choice program compatibility with employer or union group health plans).

''(xi) The provisions of part C relating to timelines for contract renewal and beneficiary notification.''.

SEC. 4. PERMITTING DEDICATED GROUP PRACTICE HEALTH MAINTENANCE ORGANIZATIONS TO PARTICIPATE IN THE MEDICARE COST CONTRACT PROGRAM.

Section 1876(h)(6) of the Social Security Act (42 U.S.C. 1395mm(h)(6)), as redesignated and amended by section 2, is amended—

(1) in subparagraph (A), by striking ''After the date of the enactment'' and inserting ''Except as provided in subparagraph (C), after the date of the enactment'';

(2) in subparagraph (B), by striking ''subparagraph (C)'' and inserting ''subparagraph (D)'';

(3) by redesignating subparagraph (C) as subparagraph (D); and

(4) by inserting after subparagraph (B), the following new subparagraph:

''(C) Subject to paragraph (5) and subparagraph (D), the Secretary shall approve an application to enter into a reasonable cost contract under this section if—

''(i) the application is submitted to the Secretary by a health maintenance organization (as defined in section 1301(a) of the Public Health Service Act) that, as of January 1, 2004, and except as provided in section 1301(b)(3)(B) of such Act, provides at least 85 percent of the services of a physician which are provided as basic health services through a medical group (or groups), as defined in section 1302(4) of such Act; and

''(ii) the Secretary determines that the organization meets the requirements applicable to such organizations and contracts under this section.''.

By Mr. BINGAMAN (for himself, Ms. COLLINS, Mr. JEFFORDS, and Mr. DODD):

S. 1223. A bill to increase the number of well-trained mental health service professionals (including those based in schools) providing clinical mental health care to children and adolescents, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. BINGAMAN. Mr. President, I rise today because there is a crisis in our country that begs our attention. This crisis is the overwhelming lack of adequate mental health services available to the children and adolescents in our Nation and it is time that we address it. As I speak, over 13,700,000 young people are suffering from diagnosable psychiatric disorders. Sadly, fewer than one-third of these have access to mental healthcare. Today I am introducing the ''Child Healthcare Crisis Relief Act'' along with Senators COLLINS, JEFFORDS, and DODD in an effort to reduce the disparity between the need for mental health services and resources available to meet that need.

The landmark report ''Mental Health: A Report of the Surgeon General'' illuminated the crisis in 1999. 13,700,000 young people have diagnosable mental disorders including 6–9,000,000 children and adolescents who meet the definition for having a serious emotional disturbance and 5–9 percent of youth who meet the definition for having severe functional impairment. Unfortunately, few of these young people have access to adequate mental health services. The resulting lack of treatment leads to a lifetime cycle of difficulties from unresolved mental health issues. These difficulties are often as severe as school failure, substance abuse, job and relationship instability, and even criminal behavior or suicide. In many cases, young people who do not receive the mental health treatment that they need end up in foster care or even in the juvenile justice system. In my state of New Mexico, a 2002 report concluded that 1 in 7 incarcerated youth is currently in a detention center solely because there is no appropriate treatment option available. These youth are actually cleared to leave as soon as they have adequate treatment in place. In fact, from January 2001 to December of 2001 an estimated 718 New Mexico youth were collectively incarcerated for 31.3 years waiting for a treatment opening. Most other States are facing similar situations. In fact, studies have found that nationally more than 1 in 3 youth in detention centers have a mental health disorder. Clearly, this is an issue that demands our immediate attention.

One of the key barriers to treatment is the shortage of available specialists trained in the identification, diagnosis, and treatment of children and adolescents with emotional and behavioral disorders. The 1999 Surgeon General's Report stated, ''there is a dearth of child psychiatrists, appropriately trained clinical child psychologists, and social workers.'' There are particularly acute shortages in the number of mental health service professionals serving children and adolescents with serious emotional disorders as well as those serving rural areas. Nationwide, 4,358 urban, suburban, and rural localities have been designated mental health Professional Shortage Areas by the Federal Government. The President's New Freedom Commission has recognized the shortage and has made a recommendation to develop a strategic plan to address it. The Council on Graduate Medical Education and the State Mental Health Commissioners have also recognized this shortage of mental health professionals.

The Child Healthcare Crisis Relief Act will help remove one of the key barriers to treatment for children and adolescents with mental illnesses: the lack of available specialists trained in this field. This bill creates incentives to help recruit and retain child mental health professionals providing direct clinical care and to improve, expand, or help create programs to train child mental health professionals through several mechanisms. The bill provides loan repayment and scholarships for child mental health and school-based service professionals to help pay back educational loans. It provides grants to graduate schools to provide for internships and field placements in child mental health services. It provides grants to help with the preservice and inservice training of paraprofessionals who work in the children's mental health clinical settings. It also provides grants to graduate schools to help develop and expand child and adolescent mental health programs. Finally, the bill allows for an increase in the number of child and adolescent psychiatrists permitted under the Medicare Graduate Medical Education Program, extends the Board Eligibility period for residents and fellows from 4 years to 6 years, and instructs the secretary to prepare a report on the distribution and need for child mental health and school-based professionals.

I ask my colleagues in the Senate to join me along with Senators COLLINS, JEFFORDS, and DODD in supporting this essential legislation. Over 13 million children in our country are counting on us.

As Walt Disney once said, ''Our Nation's greatest national resource is the minds of our children.'' Let us not fail these 13 million people.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1223

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Health Care Crisis Relief Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Center for Mental Health Services estimates that 20 percent or 13,700,000 of the Nation's children and adolescents have a diagnosable mental health disorder, and about ⅔ of these children and adolescents do not receive mental health care.

(2) According to ''Mental Health: A Report of the Surgeon General'' in 1999, there are

approximately 6,000,000 to 9,000,000 children and adolescents in the United States (accounting for 9 to 13 percent of all children and adolescents in the United States) who meet the definition for having a serious emotional disturbance.

(3) According to the Center for Mental Health Services, approximately 5 to 9 percent of children and adolescents in the United States meet the definition for extreme functional impairment.

(4) According to the Surgeon General's Report, there are particularly acute shortages in the numbers of mental health service professionals serving children and adolescents with serious emotional disorders.

(5) According to the National Center for Education Statistics in the Department of Education, there are approximately 513 students for each school counselor in United States schools, which ratio is more than double the recommended ratio of 250 students for each school counselor.

(6) According to a year 2000 estimate of the Bureau of Health Professions, the demand for the services of child and adolescent psychiatry is projected to increase by 100 percent by 2020.

(7) The development and application of knowledge about the impact of disasters on children, adolescents, and their families has been impeded by critical shortages of qualified researchers and practitioners specializing in this work.

(8) According to the Bureau of the Census, the population of children and adolescents in the United States under the age of 18 is projected to grow by more than 40 percent, from 70,000,000 to more than 100,000,000 by 2050.

SEC. 3. LOAN REPAYMENTS, SCHOLARSHIPS, AND GRANTS TO IMPROVE CHILD AND ADOLESCENT MENTAL HEALTH CARE.

Part B of title VII of the Public Health Service Act (42 U.S.C. 293 et seq.) is amended by adding at the end the following:

''SEC. 742. LOAN REPAYMENTS, SCHOLARSHIPS, AND GRANTS TO IMPROVE CHILD AND ADOLESCENT MENTAL HEALTH CARE.

''(a) LOAN REPAYMENTS FOR CHILD AND ADOLESCENT MENTAL HEALTH SERVICE PROFESSIONALS.—

''(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may establish a program of entering into contracts on a competitive basis with eligible individuals (as defined in paragraph (2)) under which—

''(A) the eligible individual agrees to be employed full-time for a specified period of at least 2 years in providing mental health services to children and adolescents; and

''(B) the Secretary agrees to make, during the period of employment described in subparagraph (A), partial or total payments on behalf of the individual on the principal and interest due on the undergraduate and graduate educational loans of the eligible individual.

''(2) ELIGIBLE INDIVIDUAL.—For purposes of this section, the term 'eligible individual' means an individual who—

''(A) is receiving specialized training or clinical experience in child and adolescent mental health in psychiatry, psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family therapy, school counseling, or professional counseling and has less than 1 year remaining before completion of such training or clinical experience; or

''(B)(i) has a license in a State to practice allopathic medicine, osteopathic medicine, psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family therapy, school counseling, or professional counseling; and

''(ii)(I) is a mental health service professional who completed (but not before the end of the calendar year in which this section is enacted) specialized training or clinical experience in child and adolescent mental health services described in subparagraph (A); or

''(II) is a physician who graduated from (but not before the end of the calendar year in which this section is enacted) an accredited child and adolescent psychiatry residency or fellowship program in the United States.

''(3) ADDITIONAL ELIGIBILITY REQUIREMENTS.—The Secretary may not enter into a contract under this subsection with an eligible individual unless the individual—

''(A) is a United States citizen or a permanent legal United States resident; and

''(B) if enrolled in a graduate program (including a medical residency or fellowship), has an acceptable level of academic standing as determined by the Secretary.

''(4) PRIORITY.—In entering into contracts under this subsection, the Secretary shall give priority to applicants who—

''(A) are or will be working with high priority populations;

''(B) have familiarity with evidence-based methods in child and adolescent mental health services;

''(C) demonstrate financial need; and

''(D) are or will be—

''(i) working in the publicly funded sector;

''(ii) working in organizations that serve underserved populations; or

''(iii) willing to provide patient services—

''(I) regardless of the ability of a patient to pay for such services; or

''(II) on a sliding payment scale if a patient is unable to pay the total cost of such services.

''(5) MEANINGFUL LOAN REPAYMENT.—If the Secretary determines that funds appropriated for a fiscal year to carry out this subsection are not sufficient to allow a meaningful loan repayment to all expected applicants, the Secretary shall limit the number of contracts entered into under paragraph (1) to ensure that each such contract provides for a meaningful loan repayment.

''(6) AMOUNT.—

''(A) MAXIMUM.—For each year of the employment period described in paragraph (1)(A), the Secretary shall not, under a contract described in paragraph (1), pay more than $35,000 on behalf of an individual.

''(B) CONSIDERATION.—In determining the amount of payments to be made on behalf of an eligible individual under a contract described in paragraph (1), the Secretary shall consider the income and debt load of the eligible individual.

''(7) APPLICABILITY OF CERTAIN PROVISIONS.—The provisions of sections 338E and 338F shall apply to the program established under paragraph (1) to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of title III.

''(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $10,000,000 for each of fiscal years 2004 through 2008.

''(b) SCHOLARSHIPS FOR STUDENTS STUDYING TO BECOME CHILD AND ADOLESCENT MENTAL HEALTH SERVICE PROFESSIONALS.—

''(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may establish a program to award scholarships on a competitive basis to eligible students who agree to enter into full-time employment (as described in paragraph (4)(C)) as a child and adolescent mental health service professional after graduation or completion of a residency or fellowship.

''(2) ELIGIBLE STUDENT.—For purposes of this subsection, the term 'eligible student' means a United States citizen or a permanent legal United States resident who—

''(A) is enrolled or accepted to be enrolled in a graduate program that includes specialized training or clinical experience in child and adolescent mental health in psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family therapy, school counseling, or professional counseling; or

''(B) is enrolled or accepted to be enrolled in an accredited graduate training program of allopathic or osteopathic medicine in the United States and intends to complete an accredited residency or fellowship in child and adolescent psychiatry.

''(3) PRIORITY.—In awarding scholarships under this subsection, the Secretary shall give—

''(A) highest priority to applicants who previously received a scholarship under this subsection and satisfy the criteria described in subparagraph (B); and

''(B) second highest priority to applicants who—

''(i) demonstrate a commitment to working with high priority populations;

''(ii) have familiarity with evidence-based methods in child and adolescent mental health services;

''(iii) demonstrate financial need; and

''(iv) are or will be—

''(I) working in the publicly funded sector;

''(II) working in organizations that serve underserved populations; or

''(III) willing to provide patient services—

''(aa) regardless of the ability of a patient to pay for such services; or

''(bb) on a sliding payment scale if a patient is unable to pay the total cost of such services.

''(4) REQUIREMENTS.—The Secretary may award a scholarship to an eligible student under this subsection only if the eligible student agrees—

''(A) to complete any graduate training program, internship, residency, or fellowship applicable to that eligible student under paragraph (2);

''(B) to maintain an acceptable level of academic standing (as determined by the Secretary) during the completion of such graduate training program, internship, residency, or fellowship; and

''(C) to be employed full-time after graduation or completion of a residency or fellowship, for at least the number of years for which a scholarship is received by the eligible student under this subsection, in providing mental health services to children and adolescents.

''(5) USE OF SCHOLARSHIP FUNDS.—A scholarship awarded to an eligible student for a school year under this subsection may be used to pay for only tuition expenses of the school year, other reasonable educational expenses (including fees, books, and laboratory expenses incurred by the eligible student in the school year), and reasonable living expenses, as such tuition expenses, reasonable educational expenses, and reasonable living expenses are determined by the Secretary.

''(6) AMOUNT.—The amount of a scholarship under this subsection shall not exceed the total amount of the tuition expenses, reasonable educational expenses, and reasonable living expenses described in paragraph (5).

''(7) APPLICABILITY OF CERTAIN PROVISIONS.—The provisions of sections 338E and 338F shall apply to the program established under paragraph (1) to the same extent and in the same manner as such provisions apply to the National Health Service Corps Scholarship Program established in subpart III of part D of title III.

''(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $5,000,000 for each of fiscal years 2004 through 2008.

''(c) CLINICAL TRAINING GRANTS FOR PROFESSIONALS.—

''(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, and in cooperation with the Administrator of the Substance Abuse and Mental Health Services Administration, may establish a program to award grants on a competitive basis to accredited institutions of higher education to establish or expand internships or other field placement programs for students receiving specialized training or clinical experience in child and adolescent mental health in the fields of psychiatry, psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family therapy, school counseling, or professional counseling.

''(2) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to applicants that—

''(A) have demonstrated the ability to collect data on the number of students trained in child and adolescent mental health and the populations served by such students after graduation;

''(B) have demonstrated familiarity with evidence-based methods in child and adolescent mental health services; and

''(C) have programs designed to increase the number of professionals serving high priority populations.

''(3) REQUIREMENTS.—The Secretary may award a grant to an applicant under this subsection only if the applicant agrees that—

''(A) any internship or other field placement program assisted under the grant will prioritize cultural competency;

''(B) students benefiting from any assistance under this subsection will be United States citizens or permanent legal United States residents;

''(C) the institution will provide to the Secretary such data, assurances, and information as the Secretary may require; and

''(D) with respect to any violation of the agreement between the Secretary and the institution, the institution will pay such liquidated damages as prescribed by the Secretary by regulation.

''(4) APPLICATION.—Each institution of higher education desiring a grant under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require including a description of the experience of such institution in working with child and adolescent mental health issues.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $10,000,000 for each of fiscal years 2004 through 2008.

''(d) PROGRESSIVE EDUCATION GRANTS FOR PARAPROFESSIONALS.—

''(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, and in cooperation with the Administrator of the Substance Abuse and Mental Health Services Administration, may establish a program to award grants on a competitive basis to State-licensed mental health nonprofit and for-profit organizations, including accredited institutions of higher education, (in this subsection referred to as 'organizations') to enable such organizations to pay for programs for preservice or in-service training of paraprofessional child and adolescent mental health workers.

''(2) DEFINITION.—For purposes of this subsection, the term 'paraprofessional child and adolescent mental health worker' means an individual who is not a mental health service professional, but who works at the first stage of contact with children and families who are seeking mental health services.

''(3) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to organizations that—

''(A) have demonstrated the ability to collect data on the number of paraprofessional child and adolescent mental health workers trained by the applicant and the populations served by these workers after the completion of the training;

''(B) have familiarity with evidence-based methods in child and adolescent mental health services; and

''(C) have programs designed to increase the number of paraprofessional child and adolescent mental health workers serving high priority populations.

''(4) REQUIREMENTS.—The Secretary may award a grant to an organization under this subsection only if the organization agrees that—

''(A) any training program assisted under the grant will prioritize cultural competency;

''(B) the organization will provide to the Secretary such data, assurances, and information as the Secretary may require; and

''(C) with respect to any violation of the agreement between the Secretary and the organization, the organization will pay such liquidated damages as prescribed by the Secretary by regulation.

''(5) APPLICATION.—Each organization desiring a grant under this subsection shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require including a description of the experience of the organization in working with paraprofessional child and adolescent mental health workers.

''(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $5,000,000 for each of fiscal years 2004 through 2008.

''(e) CHILD AND ADOLESCENT MENTAL HEALTH PROGRAM DEVELOPMENT GRANTS.—

''(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may establish a program to increase the number of well-trained child and adolescent mental health service professionals in the United States by awarding grants on a competitive basis to accredited institutions of higher education to enable such institutions to establish or expand accredited graduate child and adolescent mental health programs.

''(2) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to applicants that—

''(A) demonstrate familiarity with the use of evidence-based methods in child and adolescent mental health services;

''(B) provide experience in and collaboration with community-based child and adolescent mental health services;

''(C) have included normal child development education in their curricula; and

''(D) demonstrate commitment to working with high priority populations.

''(3) USE OF FUNDS.—Funds awarded under this subsection may be used to establish or expand any accredited graduate child and adolescent mental health program in any manner deemed appropriate by the Secretary, including improving the coursework, related field placements, or faculty of such program.

''(4) REQUIREMENTS.—The Secretary may award a grant to an accredited institution of higher education under this subsection only if the institution agrees that—

''(A) any child and adolescent mental health program assisted under the grant will prioritize cultural competency;

''(B) the institution will provide to the Secretary such data, assurances, and information as the Secretary may require; and

''(C) with respect to any violation of the agreement between the Secretary and the institution, the institution will pay such liquidated damages as prescribed by the Secretary by regulation.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $15,000,000 for each of fiscal years 2004 through 2008.

''(f) DEFINITIONS.—In this section:

''(1) HIGH PRIORITY POPULATION.—The term 'high priority population' means a population that has a high incidence of children and adolescents who have serious emotional disturbances, are racial and ethnic minorities, or live in underserved urban or rural areas.

''(2) MENTAL HEALTH SERVICE PROFESSIONAL.—The term 'mental health service professional' means an individual with a graduate or postgraduate degree from an accredited institution of higher education in psychiatry, psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family counseling, school counseling, or professional counseling.

''(3) SPECIALIZED TRAINING OR CLINICAL EXPERIENCE IN CHILD AND ADOLESCENT MENTAL HEALTH.—The term 'specialized training or clinical experience in child and adolescent mental health' means training and clinical experience that—

''(A) is part of or occurs after completion of an accredited graduate program in the United States for training mental health service professionals;

''(B) consists of at least 500 hours of training or clinical experience in treating children and adolescents; and

''(C) is comprehensive, coordinated, developmentally appropriate, and of high quality to address the unique ethnic and cultural diversity of the United States population.''.

SEC. 4. AMENDMENTS TO SOCIAL SECURITY ACT TO IMPROVE CHILD AND ADOLESCENT MENTAL HEALTH CARE.

(a) INCREASING NUMBER OF CHILD AND ADOLESCENT PSYCHIATRY RESIDENTS PERMITTED TO BE PAID UNDER THE MEDICARE GRADUATE MEDICAL EDUCATION PROGRAM.—Section 1886(h)(4)(F) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(F)) is amended by adding at the end the following:

''(iii) INCREASE ALLOWED FOR TRAINING IN CHILD AND ADOLESCENT PSYCHIATRY.—In applying clause (i), there shall not be taken into account such additional number of full-time equivalent residents in the field of allopathic or osteopathic medicine who are residents or fellows in child and adolescent psychiatry as the Secretary determines reasonable to meet the need for such physicians as demonstrated by the 1999 report of the Department of Health and Human Services entitled 'Mental Health: A Report of the Surgeon General'.''.

(b) EXTENSION OF MEDICARE BOARD ELIGIBILITY PERIOD FOR RESIDENTS AND FELLOWS IN CHILD AND ADOLESCENT PSYCHIATRY.—

(1) IN GENERAL.—Section 1886(h)(5)(G) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(G)) is amended—

(A) in clause (i), by striking ''and (v)'' and inserting ''(v), and (vi)''; and

(B) by adding at the end the following:

''(vi) CHILD AND ADOLESCENT PSYCHIATRY TRAINING PROGRAMS.—In the case of an individual enrolled in a child and adolescent psychiatry residency or fellowship program approved by the Secretary, the period of board eligibility and the initial residency period shall be the period of board eligibility for the specialty of general psychiatry, plus 2 years

for the subspecialty of child and adolescent psychiatry.''.

(2) CONFORMING AMENDMENT.—Section 1886(h)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(F)) is amended by striking ''subparagraph (G)(v)'' and inserting ''clauses (v) and (vi) of subparagraph (G)''.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to residency training years beginning on or after July 1, 2003.

SEC. 5. CHILD MENTAL HEALTH PROFESSIONAL REPORT.

(a) STUDY.—The Administrator of the Health Resources and Services Administration (in this section referred to as the ''Administrator'') shall study and make findings and recommendations on the distribution and need for child mental health service professionals, including—

(1) the need for specialty certifications;

(2) the breadth of practice types;

(3) the adequacy of locations;

(4) the adequacy of education and training; and

(5) an evaluation of best practice characteristics.

(b) DISAGGREGATION.—The results of the study required by subsection (a) shall be disaggregated by State.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Administrator shall submit to the appropriate committees of Congress and make publicly available a report on the study, findings, and recommendations required by subsection (a).

(d) REVISION.—Each year the Administrator shall revise the report required under subsection (c).

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2004 through 2008.

SEC. 6. REPORTS.

(a) TRANSMISSION.—The Secretary of Health and Human Services shall transmit a report described in subsection (b) to Congress—

(1) not later than 3 years after the date of the enactment of this Act; and

(2) not later than 5 years after the date of the enactment of this Act.

(b) CONTENTS.—The reports transmitted to Congress under subsection (a) shall address each of the following:

(1) The effectiveness of the amendments made by, and the programs carried out under, this Act in increasing the number of child and adolescent mental health service professionals and paraprofessional child and adolescent mental health workers.

(2) The demographics of the individuals served by such increased number of child and adolescent mental health service professionals and paraprofessional child and adolescent mental health workers.

By Mr. CORZINE (for himself and Mr. LAUTENBERG):

S. 1224. A bill to expand the powers of the Attorney General to regulate the manufacture, distribution, and sale of firearms and ammunition, and to expand the jurisdiction of the Attorney General to include firearm products and nonpowder firearms; to the Committee on the Judiciary.

Mr. CORZINE. Mr. President, I rise today to introduce the Firearms Safety and Consumer Protection Act of 2003, legislation to protect gun owners and the public by establishing safety standards for firearms such as those currently in place for other consumer products.

Because of a loophole in current law, firearms are virtually the only consumer product not subject to any Federal health and safety standards. Yet firearms are the second leading cause of product-related death in America. In 2000 alone, 28,663 Americans died by gunfire and nearly twice that number were treated in emergency rooms for non-fatal gunshot injuries.

Of course, all firearms are lethal. But many guns are much more dangerous than they have to be. First, many firearms are manufactured poorly or with components of inadequate quality. These guns can pose a severe threat to gun owners, as well as members of the public. For example, one firearm manufacturer settled a class action suit for more than $31 million in 1995, and thereafter improved the quality of their guns, after gun owners alleged that their firearms were produced from steel that was too weak, and thus prone to explode.

Unfortunately, the lack of safety standards in current law means that many defective firearms remain in circulation, with the government largely unable to do anything about it. We cannot recall such firearms. We cannot require that warning labels be attached to them. We can do very little to protect gun owners and the public from the threat they pose.

Beyond the need to better regulate firearms that are manufactured defectively, we also need to do more to ensure that firearms are designed properly, with features that reduce unreasonable risks. Unfortunately, too many firearms lack readily available features that could make them much less likely to be involved in an accident. For example, many guns lack so-called magazine disconnects, which disable a firearm when its magazine is removed. This feature could prevent many accidental deaths caused when a firearm user, seeing that the magazine has been removed, wrongly concludes that a gun is not loaded. Along the same lines, too few firearms include a load indicator, which allows an individual to readily see whether the gun is loaded. Both of these features would address the most common scenario for unintentional shootings, which involves a person who does not realize that there is still a round in a gun's chamber.

By regulating the manufacture and design of firearms, we can significantly reduce the number of accidental shootings, and the serious injuries and deaths they cause. However, better safety regulation also holds the promise of reducing the number of deaths from homicides and suicides.

In recent years, firearm manufacturers have taken a number of steps to make firearms more likely to be used in crimes, and more deadly if they are. For example, many guns are being produced in a manner that makes them readily concealable, and thus more attractive to criminals. In addition, many manufacturers have increased the number of rounds that a gun can fire without reloading, and have increased the size of their ammunition, making the firearms far more lethal.

Given the threat posed by unreasonably dangerous firearms to gun owners and the general public, there is no excuse for exempting firearms from health and safety standards applicable to most other consumer products. In fact, there is evidence that the public would support such regulation. A 1999 National Opinion Research Center survey found that two-thirds of Americans want the Federal Government to regulate the safety design of guns.

The Firearms Safety and Consumer Protection Act would do just that. The bill would give the Department of Justice the authority to: set minimum safety standards for the manufacture, design and distribution of firearms; issue recalls and warnings; collect data on gun-related death and injury; and limit the sale of products when no other remedy is sufficient. It is important to emphasize that the bill would not limit the public's access to guns for hunting and other legitimate sporting purposes.

More than 120 national, state and local organizations support this bill, including: the American Academy of Pediatrics, American Bar Association, American Jewish Congress, American Public Health Association, Brady Campaign to Prevent Gun Violence, Coalition to Stop Gun Violence, Consumer Federation of America, the NAACP, National Coalition Against Domestic Violence, United Church of Christ Justice and Witness Ministries, and the Violence Policy Center.

There simply is no reason to maintain the existing loophole that exempts firearms from basic health and safety protections. This loophole is creating a serious public safety problem, especially for gun owners themselves.

In conclusion, I hope my colleagues will consider this: under current law, the safety of toy guns is regulated. The safety of real guns is not. Even if my colleagues in the Senate cannot agree on much else when it comes to guns, surely we should all agree that this makes no sense.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1224

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Firearms Safety and Consumer Protection Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) protect the public against unreasonable risk of injury and death associated with firearms and related products;

(2) develop safety standards for firearms and related products;

(3) assist consumers in evaluating the comparative safety of firearms and related products;

(4) promote research and investigation into the causes and prevention of firearm-related deaths and injuries; and

(5) restrict the availability of weapons that pose an unreasonable risk of death or injury.

SEC. 3. DEFINITIONS.

(a) SPECIFIC TERMS.—In this Act:

(1) FIREARMS DEALER.—The term ''firearms dealer'' means—

(A) any person engaged in the business (as defined in section 921(a)(21)(C) of title 18, United States Code) of dealing in firearms at wholesale or retail;

(B) any person engaged in the business (as defined in section 921(a)(21)(D) of title 18, United States Code) of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; and

(C) any person who is a pawnbroker.

(2) FIREARM PART.—The term ''firearm part'' means—

(A) any part or component of a firearm as originally manufactured;

(B) any good manufactured or sold—

(i) for replacement or improvement of a firearm; or

(ii) as any accessory or addition to the firearm; and

(C) any good that is not a part or component of a firearm and is manufactured, sold, delivered, offered, or intended for use exclusively to safeguard individuals from injury by a firearm.

(3) FIREARM PRODUCT.—The term ''firearm product'' means a firearm, firearm part, nonpowder firearm, and ammunition.

(4) FIREARM SAFETY REGULATION.—The term ''firearm safety regulation'' means a regulation prescribed under this Act.

(5) FIREARM SAFETY STANDARD.—The term ''firearm safety standard'' means a standard promulgated under this Act.

(6) IMMINENTLY HAZARDOUS FIREARM PRODUCT.—The term ''imminently hazardous firearm product'' means any firearm product with respect to which the Attorney General determines that—

(A) the product poses an unreasonable risk of injury to the public; and

(B) time is of the essence in protecting the public from the risks posed by the product.

(7) NONPOWDER FIREARM.—The term ''nonpowder firearm'' means a device specifically designed to discharge BBs, pellets, darts, or similar projectiles by the release of stored energy.

(8) QUALIFIED FIREARM PRODUCT DEFINED.—The term ''qualified firearm product'' means a firearm product—

(A) that—

(i) is being transported;

(ii) having been transported, remains unsold;

(iii) is sold or offered for sale; or

(iv) is imported or is to be exported; and

(B) that—

(i) is not in compliance with a regulation prescribed or an order issued under this Act; or

(ii) with respect to which relief has been granted under section 303.

(b) OTHER TERMS.—Each term used in this Act that is not defined in subsection (a) shall have the meaning (if any) given that term in section 921(a) of title 18, United States Code.

TITLE I—REGULATION OF FIREARM PRODUCTS

SEC. 101. REGULATORY AUTHORITY.

(a) IN GENERAL.—The Attorney General shall prescribe such regulations governing the design, manufacture, and performance of, and commerce in, firearm products, consistent with this Act, as are reasonably necessary to reduce or prevent unreasonable risk of injury resulting from the use of those products.

(b) MAXIMUM INTERVAL BETWEEN ISSUANCE OF PROPOSED AND FINAL REGULATION.—Not later than 120 days after the date on which the Attorney General issues a proposed regulation under subsection (a) with respect to a matter, the Attorney General shall issue a regulation in final form with respect to the matter.

(c) PETITIONS.—

(1) IN GENERAL.—Any person may petition the Attorney General to—

(A) issue, amend, or repeal a regulation prescribed under subsection (a) of this section; or

(B) require the recall, repair, or replacement of a firearm product, or the issuance of refunds with respect to a firearm product.

(2) DEADLINE FOR ACTION ON PETITION.—Not later than 120 days after the date on which the Attorney General receives a petition referred to in paragraph (1), the Attorney General shall—

(A) grant, in whole or in part, or deny the petition; and

(B) provide the petitioner with the reasons for granting or denying the petition.

SEC. 102. ORDERS; INSPECTIONS.

(a) AUTHORITY TO PROHIBIT MANUFACTURE, SALE, OR TRANSFER OF FIREARM PRODUCTS MADE, IMPORTED, TRANSFERRED, OR DISTRIBUTED IN VIOLATION OF REGULATION.—The Attorney General may issue an order prohibiting the manufacture, sale, or transfer of a firearm product which the Attorney General finds has been manufactured, or has been or is intended to be imported, transferred, or distributed in violation of a regulation prescribed under this Act.

(b) AUTHORITY TO REQUIRE THE RECALL, REPAIR, OR REPLACEMENT OF, OR THE PROVISION OF REFUNDS WITH RESPECT TO FIREARM PRODUCTS.—The Attorney General may issue an order requiring the manufacturer of, and any dealer in, a firearm product which the Attorney General determines poses an unreasonable risk of injury to the public, is not in compliance with a regulation prescribed under this Act, or is defective, to—

(1) provide notice of the risks associated with the product, and of how to avoid or reduce the risks, to—

(A) the public;

(B) in the case of the manufacturer of the product, each dealer in the product; and

(C) in the case of a dealer in the product, the manufacturer of the product and the other persons known to the dealer as dealers in the product;

(2) bring the product into conformity with the regulations prescribed under this Act;

(3) repair the product;

(4) replace the product with a like or equivalent product which is in compliance with those regulations;

(5) refund the purchase price of the product, or, if the product is more than 1 year old, a lesser amount based on the value of the product after reasonable use;

(6) recall the product from the stream of commerce; or

(7) submit to the Attorney General a satisfactory plan for implementation of any action required under this subsection.

(c) AUTHORITY TO PROHIBIT MANUFACTURE, IMPORTATION, TRANSFER, DISTRIBUTION, OR EXPORT OF UNREASONABLY RISKY FIREARM PRODUCTS.—The Attorney General may issue an order prohibiting the manufacture, importation, transfer, distribution, or export of a firearm product if the Attorney General determines that the exercise of other authority under this Act would not be sufficient to prevent the product from posing an unreasonable risk of injury to the public.

(d) INSPECTIONS.—When the Attorney General has reason to believe that a violation of this Act, or of a regulation or order issued under this Act, is being, or has been, committed, the Attorney General may, at reasonable times—

(1) enter any place in which firearm products are manufactured, stored, or held, for distribution in commerce, and inspect those areas where the products are manufactured, stored, or held; and

(2) enter and inspect any conveyance being used to transport a firearm product.

TITLE II—PROHIBITIONS

SEC. 201. PROHIBITIONS.

(a) FAILURE OF MANUFACTURER TO TEST AND CERTIFY FIREARM PRODUCTS.—It shall be unlawful for the manufacturer of a firearm product to transfer, distribute, or export a firearm product unless—

(1) the manufacturer has tested the product in order to ascertain whether the product is in conformity with the regulations prescribed under section 101;

(2) the product is in conformity with those regulations; and

(3) the manufacturer has included in the packaging of the product, and furnished to each person to whom the product is distributed, a certificate stating that the product is in conformity with those regulations.

(b) FAILURE OF MANUFACTURER TO PROVIDE NOTICE OF NEW TYPES OF FIREARM PRODUCTS.—It shall be unlawful for the manufacturer of a new type of firearm product to manufacture the product, unless the manufacturer has provided the Attorney General with—

(1) notice of the intent of the manufacturer to manufacture the product; and

(2) a description of the product.

(c) FAILURE OF MANUFACTURER OR DEALER TO LABEL FIREARM PRODUCTS.—It shall be unlawful for a manufacturer of or dealer in firearms to transfer, distribute, or export a firearm product unless the product is accompanied by a label that is located prominently in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label and that contains—

(1) the name and address of the manufacturer of the product;

(2) the name and address of any importer of the product;

(3) the model number of the product and the date the product was manufactured;

(4) a specification of the regulations prescribed under this Act that apply to the product; and

(5) the certificate required by subsection (a)(3) with respect to the product.

(d) FAILURE TO MAINTAIN OR PERMIT INSPECTION OF RECORDS.—It shall be unlawful for an importer of, manufacturer of, or dealer in a firearm product to fail to—

(1) maintain such records, and supply such information, as the Attorney General may require in order to ascertain compliance with this Act and the regulations and orders issued under this Act; and

(2) permit the Attorney General to inspect and copy those records at reasonable times.

(e) IMPORTATION AND EXPORTATION OF UNCERTIFIED FIREARM PRODUCTS.—It shall be unlawful for any person to import into the United States or export a firearm product that is not accompanied by the certificate required by subsection (a)(3).

(f) COMMERCE IN FIREARM PRODUCTS IN VIOLATION OF ORDER ISSUED OR REGULATION PRESCRIBED UNDER THIS ACT.—It shall be unlawful for any person to manufacture, offer for sale, distribute in commerce, import into the United States, or export a firearm product—

(1) that is not in conformity with the regulations prescribed under this Act; or

(2) in violation of an order issued under this Act.

(g) STOCKPILING.—It shall be unlawful for any person to manufacture, purchase, or import a firearm product, after the date a regulation is prescribed under this Act with respect to the product and before the date the regulation takes effect, at a rate that is significantly greater than the rate at which the person manufactured, purchased, or imported the product during a base period (prescribed by the Attorney General in regulations) ending before the date the regulation is so prescribed.

SEC. 202. INAPPLICABILITY TO GOVERNMENTAL AUTHORITIES.

Section 201 does not apply to any department or agency of the United States, of a State, or of a political subdivision of a State, or to any official conduct of any officer or employee of such a department or agency.

TITLE III—ENFORCEMENT

Subtitle A—Civil Enforcement

SEC. 301. CIVIL PENALTIES.

(a) AUTHORITY TO IMPOSE FINES.—

(1) IN GENERAL.—The Attorney General shall impose upon any person who violates section 201 a civil fine in an amount that does not exceed the applicable amount described in subsection (b).

(2) SCOPE OF OFFENSE.—Each violation of section 201 (other than of subsection (a)(3) or (d) of that section) shall constitute a separate offense with respect to each firearm product involved.

(b) APPLICABLE AMOUNT.—

(1) FIRST 5-YEAR PERIOD.—The applicable amount for the 5-year period immediately following the date of enactment of this Act is $5,000, or $10,000 if the violation is willful.

(2) AFTER 5-YEAR PERIOD.—The applicable amount during any time after the 5-year period described in paragraph (1) is $10,000, or $20,000 if the violation is willful.

SEC. 302. INJUNCTIVE ENFORCEMENT AND SEIZURE.

(a) INJUNCTIVE ENFORCEMENT.—The Attorney General may bring an action to restrain any violation of section 201 in the United States district court for any district in which the violation has occurred, or in which the defendant is found or transacts business.

(b) CONDEMNATION.—The Attorney General may bring an action in rem for condemnation of a qualified firearm product in the United States district court for any district in which the Attorney General has found and seized for confiscation the product.

SEC. 303. IMMINENTLY HAZARDOUS FIREARMS.

(a) IN GENERAL.—Notwithstanding the pendency of any other proceeding in a court of the United States, the Attorney General may bring an action in a United States district court to restrain any person who is a manufacturer of, or dealer in, an imminently hazardous firearm product from manufacturing, distributing, transferring, importing, or exporting the product.

(b) RELIEF.—In an action brought under subsection (a), the court may grant such temporary or permanent relief as may be necessary to protect the public from the risks posed by the firearm product, including—

(1) seizure of the product; and

(2) an order requiring—

(A) the purchasers of the product to be notified of the risks posed by the product;

(B) the public to be notified of the risks posed by the product; or

(C) the defendant to recall, repair, or replace the product, or refund the purchase price of the product (or, if the product is more than 1 year old, a lesser amount based on the value of the product after reasonable use).

(c) VENUE.—An action under subsection (a) may be brought in the United States district court for the District of Columbia or for any district in which any defendant is found or transacts business.

SEC. 304. PRIVATE CAUSE OF ACTION.

(a) IN GENERAL.—Any person aggrieved by any violation of this Act or of any regulation prescribed or order issued under this Act by another person may bring an action against such other person in any United States district court for damages, including consequential damages. In any action under this section, the court, in its discretion, may award to a prevailing plaintiff a reasonable attorney's fee as part of the costs.

(b) RULE OF INTERPRETATION.—The remedy provided for in subsection (a) shall be in addition to any other remedy provided by common law or under Federal or State law.

SEC. 305. PRIVATE ENFORCEMENT OF THIS ACT.

(a) IN GENERAL.—Any interested person may bring an action in any United States district court to enforce this Act, or restrain any violation of this Act or of any regulation prescribed or order issued under this Act.

(b) ATTORNEY'S FEE.—In any action under this section, the court, in its discretion, may award to a prevailing plaintiff a reasonable attorney's fee as part of the costs.

SEC. 306. EFFECT ON PRIVATE REMEDIES.

(a) IRRELEVANCY OF COMPLIANCE WITH THIS ACT.—Compliance with this Act or any order issued or regulation prescribed under this Act shall not relieve any person from liability to any person under common law or State statutory law.

(b) IRRELEVANCY OF FAILURE TO TAKE ACTION UNDER THIS ACT.—The failure of the Attorney General to take any action authorized under this Act shall not be admissible in litigation relating to the product under common law or State statutory law.

Subtitle B—Criminal Enforcement

SEC. 351. CRIMINAL PENALTIES.

Any person who has received from the Attorney General a notice that the person has violated a provision of this Act or of a regulation prescribed under this Act with respect to a firearm product and knowingly violates that provision with respect to the product shall be fined under title 18, United States Code, imprisoned not more than 2 years, or both.

TITLE IV—ADMINISTRATIVE PROVISIONS

SEC. 401. FIREARM INJURY INFORMATION AND RESEARCH.

(a) INJURY DATA.—The Attorney General shall, in coordination with the Secretary of Health and Human Services—

(1) collect, investigate, analyze, and share with other appropriate government agencies circumstances of death and injury associated with firearms; and

(2) conduct continuing studies and investigations of economic costs and losses resulting from firearm-related deaths and injuries.

(b) OTHER DATA.—The Attorney General shall—

(1) collect and maintain current production and sales figures for each licensed manufacturer, broken down by the model, caliber, and type of firearms produced and sold by the licensee, including a list of the serial numbers of such firearms;

(2) conduct research on, studies of, and investigation into the safety of firearm products and improving the safety of firearm products; and

(3) develop firearm safety testing methods and testing devices.

(c) AVAILABILITY OF INFORMATION.—On a regular basis, but not less frequently than annually, the Attorney General shall make available to the public the results of the activities of the Attorney General under subsections (a) and (b).

SEC. 402. ANNUAL REPORT TO CONGRESS.

(a) IN GENERAL.—The Attorney General shall prepare and submit to the President and Congress at the beginning of each regular session of Congress, a comprehensive report on the administration of this Act for the most recently completed fiscal year.

(b) CONTENTS.—Each report submitted under subsection (a) shall include—

(1) a thorough description, developed in coordination with the Secretary of Health and Human Services, of the incidence of injury and death and effects on the population resulting from firearm products, including statistical analyses and projections, and a breakdown, as practicable, among the various types of such products associated with the injuries and deaths;

(2) a list of firearm safety regulations prescribed that year;

(3) an evaluation of the degree of compliance with firearm safety regulations, including a list of enforcement actions, court decisions, and settlements of alleged violations, by name and location of the violator or alleged violator, as the case may be;

(4) a summary of the outstanding problems hindering enforcement of this Act, in the order of priority; and

(5) a log and summary of meetings between the Attorney General or employees of the Attorney General and representatives of industry, interested groups, or other interested parties.

TITLE V—RELATIONSHIP TO OTHER LAW

SEC. 501. SUBORDINATION TO ARMS EXPORT CONTROL ACT.

In the event of any conflict between any provision of this Act and any provision of the Arms Export Control Act, the provision of the Arms Export Control Act shall control.

SEC. 502. EFFECT ON STATE LAW.

(a) IN GENERAL.—This Act shall not be construed to preempt any provision of the law of any State or political subdivision thereof, or prevent a State or political subdivision thereof from enacting any provision of law regulating or prohibiting conduct with respect to a firearm product, except to the extent that such provision of law is inconsistent with any provision of this Act, and then only to the extent of the inconsistency.

(b) RULE OF CONSTRUCTION.—A provision of State law is not inconsistent with this Act if the provision imposes a regulation or prohibition of greater scope or a penalty of greater severity than any prohibition or penalty imposed by this Act.

By Mrs. CLINTON (for herself, Ms. COLLINS, Mrs. MURRAY, and Mr. BINGAMAN):

S. 1226. A bill to coordinate efforts in collecting and analyzing data on the incidence and prevalence of developmental disabilities, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, I rise today to discuss a rising epidemic that is preventing a growing number of children in our Nation from learning and contributing fully as members of our society.

Twelve million children under the age of eighteen now suffer from a developmental, learning or behavioral disability. Since 1977, enrollment in special education programs for children with learning disabilities has doubled. In New York, there are 206,000 learning disabled children—this is fifty percent of the special education population in New York.

While we know that developmental disabilities are affecting more children and costing us more money, we still know relatively little about the causes of developmental disabilities. A National Academy of Sciences study suggests that genetic factors explain only ten to twenty percent of developmental disabilities. Considerable research suggests that toxic chemicals such as mercury, pesticides, and dioxin contribute to these problems, but proving the exact role of environmental factors in these problems will take time and significant research dollars.

We can simply not stand back and watch our children suffer from this increasing epidemic. That is why I have worked hard to develop the 2003 Act to Prevent Developmental Disabilities in Education, which I am proud to introduce today with my colleague, Senator COLLINS. It would help us lower the costs of developmental disabilities by identifying the preventable, non-genetic causes that are affecting so many children in our nation.

Our legislation would require the Department of Education to coordinate with the CDC to improve data collection on environmental hazards that cause disabilities. At this time, the Department of Education collects information on the prevalence of disabilities among children in schools and the CDC collects information on environmental toxins, but the two data systems are not coordinated. If they were, policymakers and researchers could better identify where environmental hazards may be causing developmental disabilities and target resources to these areas for abatement. A National Academy of Sciences study suggests that 28 percent of developmental disabilities are due to environmental causes, and a recent study in the New England Journal of Medicine demonstrated that exposure to low levels of lead can result in a drop of 7.4 IQ points, which can turn a healthy child into one with a developmental disability.

I am working to incorporate this legislation into the reauthorization of the Individuals with Disabilities Education Act because I believe so strongly that our children and families, indeed our entire society, benefits when we prevent developmental diseases rather than treating them after they occur.

And thank you to my friend Senator COLLINS for her hard work and commitment to this important issue.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1226

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''2003 Act to Prevent Developmental Disabilities in Education''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) Seventeen percent of children in the United States under 18 years of age have a developmental disability.

(2) Since 1977, enrollment in special education programs for children with learning disabilities has doubled.

(3) Federal and State education departments spend about $43,000,000,000 each year on special education programs for individuals with developmental disabilities who are between 3 and 21 years of age.

(4) Research suggests that genetic factors explain only 10 to 20 percent of developmental diseases, and a National Academy of Sciences study suggests that at least 28 percent of developmental disabilities are due to environmental causes.

(b) PURPOSE.—It is the purpose of this Act to ensure a collaborative tracking effort between the Department of Education and the Centers for Disease Control and Prevention for developmental disabilities and potential environmental links.

SEC. 3. DEPARTMENT OF EDUCATION TRACKING ACTIVITIES.

(a) IN GENERAL.—The Secretary of Education (in this section referred to as the ''Secretary'') shall coordinate efforts with the Director of the National Center for Birth Defects and Developmental Disabilities of the Centers for Disease Control and Prevention (in this section referred to as the ''Director'') in collecting and analyzing data on the incidence and prevalence of developmental disabilities to determine localities with a high incidence of developmental disabilities and study possible causes of the increased incidence of these diseases, disorders, and conditions.

(b) EXISTING SURVEILLANCE SYSTEMS, REGISTRIES, AND SURVEYS.—To the maximum extent practicable in implementing the activities under this section, the Secretary and the Director shall develop methods for reconciling data collected in accordance with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) on the prevalence of developmental disabilities with existing surveillance and data collection systems, registries, and surveys that are administered by the Centers for Disease Control and Prevention, including—

(1) State birth defects surveillance systems as supported under section 317C of the Public Health Service Act (42 U.S.C. 247b–4); and

(2) environmental public health tracking program grants authorized under section 301 of the Public Health Service Act (42 U.S.C. 241).

(c) PRIVACY.—In pursuing activities under this section, the Secretary and the Director shall ensure the protection of individual health privacy consistent with regulations promulgated in accordance with section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note), the Family Educational Right to Privacy Act (20 U.S.C. 1232g), and State and local privacy regulations, as applicable.

By Mr. SANTORIUM (for himself and Mrs. LINCOLN):

S. 1227. A bill to amend title XVIII of the Social Security Act to provide for coverage of substitute adult day services under the medicare program; to the Committee on Finance.

Mr. SANTORUM. Mr. President, I rise to join my colleague Mrs. LINCOLN of Arkansas to reintroduce bipartisan legislation aimed at improving long-term care health and rehabilitation options for Medicare beneficiaries, and also assisting family caregivers.

We all recognize that our Nation needs to address sooner rather than later the challenges of financing long-term care services for our growing aging population. The Congressional Budget Office has projected that national expenditures for long-term care services for the elderly will increase each year through 2040. But it is in just over a decade when we will see these challenges become even more pronounced, when the 76 million baby boomers begin to turn 65. Baby boomers are expected to live longer and greater numbers will reach 85 and older.

Congress' attention in this area is critical, given the expected growing costs of long-term care services, and the fact that so many American families are already serving as caregivers for aging or ailing seniors and providing a large portion of long-term care services. It is more important than ever that we have in place quality options in how to best care for our senior population about to dramatically increase.

This is why we are introducing the Medicare Adult Day Services Alternative Act. This legislation would offer home health beneficiaries more options for receiving care in a setting of their own choosing, rather than confining the provision of those benefits solely to the home.

This legislation would give beneficiaries the option to receive some or all of their Medicare home health services in an adult day setting. This would be a substitution, not an expansion, of services. The bill would not make new people eligible for Medicare home health benefits or expand the list of services paid for. In fact, this legislation may be designed to produce net savings for the Medicare program.

Permitting homebound patients to receive their home health care in a clinically-based senior day center, as an alternative to receiving it at home, could result in significant benefits to

the Medicare program, such as reduced cost-per-episode, reduced numbers of episodes, as well as mental and physical stimulation for patients.

Moreover, the Medicare Adult Day Services Alternative Act could well have a positive impact on our economy, as it would enable caregivers to attend to other facets in today's fast-paced family life, such as working a full- or part-time job and caring for children, knowing their loved ones are well cared for. It is unfortunate that today many caregivers have to choose between working or caring for a family member. It is estimated that the average loss of income to these caregivers is more than $600,000 in wages, pension, and Social Security benefits. And by extension, the loss in productivity in United States businesses is pegged at more than $10 billion annually.

But it does not have to be an either-or proposition. The Medicare Adult Day Services Alternative Act is a creative solution to health care delivery, which would adequately reimburse providers in a fiscally responsible way. Located in every state in the United States and the District of Columbia, adult day centers generally offer transportation, meals, personal care, and counseling in addition to the medical services and socialization benefits offered.

We can and should offer both our Medicare beneficiaries and family caregivers more and better options for health care delivery, and that is exactly what the Medicare Adult Day Services Alternative Act is designed to do. This legislation is bipartisan, and has been supported by more than 20 national non-profit organizations concerned with the well-being of America's older population and committed to representing their interests.

I hope our colleagues will join us in this cause. I again thank Senator LINCOLN for working with me in this effort, and ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1227

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Adult Day Services Alternative Act of 2003''.

SEC. 2. FINDINGS.

Congress finds that—

(1) adult day services offers services, including medical care, rehabilitation therapies, dignified assistance with activities of daily living, social interaction, and stimulating activities, to seniors who are frail, physically challenged, or cognitively impaired;

(2) access to adult day services provides seniors and their familial caregivers support that is critical to keeping the senior in the family home;

(3) more than 22,000,000 families in the United States serve as caregivers for aging or ailing seniors, nearly 1 in 4 American families, providing close to 80 percent of the care to individuals requiring long-term care;

(4) nearly 75 percent of those actively providing such care are women who also maintain other responsibilities, such as working outside of the home and raising young children;

(5) the average loss of income to these caregivers has been shown to be $659,130 in wages, pension, and Social Security benefits;

(6) the loss in productivity in United States businesses ranges from $11,000,000,000 to $29,000,000,000 annually;

(7) the services offered in adult day services facilities provide continuity of care and an important sense of community for both the senior and the caregiver;

(8) there are adult day services facilities in every State in the United States and the District of Columbia;

(9) these centers generally offer transportation, meals, personal care, and counseling in addition to the medical services and socialization benefits offered; and

(10) with the need for quality options in how to best care for our senior population about to dramatically increase with the aging of the baby boomer generation, the time to address these issues is now.

SEC. 3. MEDICARE COVERAGE OF SUBSTITUTE ADULT DAY SERVICES.

(a) SUBSTITUTE ADULT DAY SERVICES BENEFIT.—

(1) IN GENERAL.—Section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)) is amended—

(A) in the matter preceding paragraph (1), by inserting ''or (8)'' after ''paragraph (7)'';

(B) in paragraph (6), by striking ''and'' at the end;

(C) in paragraph (7), by adding ''and'' at the end; and

(D) by inserting after paragraph (7), the following new paragraph:

''(8) substitute adult day services (as defined in subsection (ww));''.

(2) SUBSTITUTE ADULT DAY SERVICES DEFINED.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''Substitute Adult Day Services; Adult Day Services Facility

''(ww)(1)(A) The term 'substitute adult day services' means the items and services described in subparagraph (B) that are furnished to an individual by an adult day services facility as a part of a plan under subsection (m) that substitutes such services for some or all of the items and services described in subparagraph (B)(i) furnished by a home health agency under the plan, as determined by the physician establishing the plan.

''(B) The items and services described in this subparagraph are the following items and services:

''(i) Items and services described in paragraphs (1) through (7) of subsection (m).

''(ii) Meals.

''(iii) A program of supervised activities designed to promote physical and mental health and furnished to the individual by the adult day services facility in a group setting for a period of not fewer than 4 and not greater than 12 hours per day.

''(iv) A medication management program (as defined in subparagraph (C)).

''(C) For purposes of subparagraph (B)(iv), the term 'medication management program' means a program of services, including medicine screening and patient and health care provider education programs, that provides services to minimize—

''(i) unnecessary or inappropriate use of prescription drugs; and

''(ii) adverse events due to unintended prescription drug-to-drug interactions.

''(2)(A) Except as provided in subparagraphs (B) and (C), the term 'adult day services facility' means a public agency or private organization, or a subdivision of such an agency or organization, that—

''(i) is engaged in providing skilled nursing services and other therapeutic services directly or under arrangement with a home health agency;

''(ii) provides the items and services described in paragraph (1)(B); and

''(iii) meets the requirements of paragraphs (2) through (8) of subsection (o).

''(B) Notwithstanding subparagraph (A), the term 'adult day services facility' shall include a home health agency in which the items and services described in clauses (ii) through (iv) of paragraph (1)(B) are provided—

''(i) by an adult day services program that is licensed or certified by a State, or accredited, to furnish such items and services in the State; and

''(ii) under arrangements with that program made by such agency.

''(C) The Secretary may waive the requirement of a surety bond under paragraph (7) of subsection (o) in the case of an agency or organization that provides a comparable surety bond under State law.''.

(b) PAYMENT FOR SUBSTITUTE ADULT DAY SERVICES.—Section 1895 of the Social Security Act (42 U.S.C. 1395fff) is amended by adding at the end the following new subsection:

''(f) PAYMENT RATE FOR SUBSTITUTE ADULT DAY SERVICES.—

''(1) PAYMENT RATE.—For purposes of making payments to an adult day services facility for substitute adult day services (as defined in section 1861(ww)), the following rules shall apply:

''(A) ESTIMATION OF PAYMENT AMOUNT.—The Secretary shall estimate the amount that would otherwise be payable to a home health agency under this section for all home health services described in paragraph (1)(B)(i) of such section under the plan of care.

''(B) AMOUNT OF PAYMENT.—Subject to paragraph (3)(B), the total amount payable for substitute adult day services under the plan of care is equal to 95 percent of the amount estimated to be payable under subparagraph (A).

''(2) LIMITATION ON BALANCE BILLING.—An adult day services facility shall accept as payment in full for substitute adult day services (including those services described in clauses (ii) through (iv) of section 1861(ww)(1)(B)) furnished by the facility to an individual entitled to benefits under this title the amount of payment provided under this subsection for home health services consisting of substitute adult day services.

''(3) ADJUSTMENT IN CASE OF OVERUTILIZATION OF SUBSTITUTE ADULT DAY SERVICES.—

''(A) MONITORING EXPENDITURES.—Beginning with fiscal year 2005, the Secretary shall monitor the expenditures made under this title for home health services, including such services consisting of substitute adult day services, for the fiscal year and shall compare such expenditures to expenditures that the Secretary estimates would have been made under this title for home health services for the fiscal year if the Medicare Adult Day Services Alternative Act of 2003 had not been enacted.

''(B) REQUIRED REDUCTION IN PAYMENT RATE.—If the Secretary determines, after making the comparison under subparagraph (A) and making such adjustments for changes in demographics and age of the medicare beneficiary population as the Secretary determines appropriate, that expenditures for home health services under the this title, including such services consisting of substitute adult day services, for the fiscal year exceed expenditures that would have been made under this title for home health

services for the fiscal year if the Medicare Adult Day Services Alternative Act of 2003 not been enacted, then the Secretary shall adjust the rate of payment to adult day services facilities under paragraph (1)(B) for home health services consisting of substitute adult day services furnished in the fiscal year in order to eliminate such excess.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2004.

By Mrs. CLINTON (for herself and Mr. DEWINE):

S. 1228: A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for property owners who remove lead-based paint hazards; to the Committee on Finance.

Mrs. CLINTON. Mr. President, I rise today to discuss a persistent, serious, and entirely preventable threat to our children's intelligence, behavior, and learning.

Lead poisoning affects 300,000 children in our Nation between the ages of one and five, and has been linked with developmental disabilities, behavioral problems, and anemia. One recent study from the New England Journal of Medicine also found that children suffered up to a 7.4 percent decrease in IQ at lead levels that CDC considers safe. At very high levels, lead poisoning can cause seizures, coma, and even death.

In New York State in 1999, over twelve thousand children suffered from lead poisoning, 9,533 of those children in New York City alone. In fact, we may even be underestimating the significance of this important public health problem.

I am glad that the Secretary of Health and Human Services considers lead poisoning to be a priority, and established a national goal of ending childhood lead poisoning by 2010. However, federal programs only have resources to remove lead-based paint hazards from less than 0.1 percent of the twenty-five million housing units that have these hazards. At this pace, we will not be able to end childhood lead poisoning by 3010, let alone 2010.

We will never stop childhood lead poisoning unless we get lead out of the buildings in which children live, work, and play. In Brooklyn, more than a third of the buildings in one community have a lead-based paint hazard. Parents of children with lead poisoning are being told that nothing can be done until their children's lead poisoning becomes worse. How can we ask children to watch and wait while their sons and daughters suffer from lead poisoning before we remove the lead from their homes?

That is why today, I am proud to introduce the Home Lead Safety Tax Credit Act of 2003 with my colleague, Senator MIKE DEWINE. This legislation would provide a tax credit to aide and encourage homeowners in removing lead-based paint hazards in their homes. Specifically, it would provide a tax credit for owners of residential properties built before 1978 that pay for abatement performed by a certified lead abatement contractor. Owners would receive a maximum tax credit of 50 percent of the cost of the abatement, not to exceed $1,500 per dwelling unit. In Massachusetts, a similar tax credit helped reduce the number of new cases of childhood lead poisoning by almost two-thirds in a decade.

The Home Lead Safety Tax Credit Act of 2003 would help homeowners make approximately 85,000 homes each year safe from lead, which is more than ten times the number of homes made lead safe by current Federal programs. It would greatly accelerate our progress in ridding our nation of the significant problem of childhood lead poisoning. I ask my colleagues to join me in supporting this legislation, which will help us achieve our common goal of protecting children from threats in our environment.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1228

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; FINDINGS; PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the ''Home Lead Safety Tax Credit Act of 2003''.

(b) FINDINGS.—Congress finds that:

(1) Of the 98,000,000 housing units in the United States, 38,000,000 have lead-based paint.

(2) Of the 38,000,000 housing units with lead-based paint, 25,000,000 pose a hazard, as defined by Environmental Protection Agency and Department of Housing and Urban Development standards, due to conditions such as peeling paint and settled dust on floors and windowsills that contain lead at levels above Federal safety standards.

(3) Though the number of children in the United States ages 1 through 5 with blood levels higher than the Centers for Disease Control action level of 10 micrograms per deciliter has declined to 300,000, lead poisoning remains a serious, entirely preventable threat to a child's intelligence, behavior, and learning.

(4) The Secretary of Health and Human Services has established a national goal of ending childhood lead poisoning by 2010.

(5) Current Federal lead abatement programs, such as the Lead Hazard Control Grant Program of the Department of Housing and Urban Development, only have resources sufficient to make approximately 7,000 homes lead-safe each year. In many cases, when State and local public health departments identify a lead-poisoned child, resources are insufficient to reduce or eliminate the hazards.

(6) Approximately 15 percent of children are lead-poisoned by home renovation projects performed by remodelers who fail to follow basic safeguards to control lead dust.

(7) Old windows typically pose significant risks because wood trim is more likely to be painted with lead-based paint, moisture causes paint to deteriorate, and friction generates lead dust. The replacement of old windows that contain lead based paint significantly reduces lead poisoning hazards in addition to producing significant energy savings.

(c) PURPOSE.—The purpose of this section is to encourage the safe removal of lead hazards from homes and thereby decrease the number of children who suffer reduced intelligence, learning difficulties, behavioral problems, and other health consequences due to lead-poisoning.

SEC. 2. LEAD ABATEMENT TAX CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

''SEC. 30B. HOME LEAD ABATEMENT.

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter an amount equal to 50 percent of the abatement cost paid or incurred by the taxpayer during the taxable year for each eligible dwelling unit of the taxpayer.

''(b) LIMITATION.—The amount of the credit allowed under subsection (a) for any eligible dwelling unit shall not exceed—

''(1) $1,500, over

''(2) the aggregate cost taken into account under subsection (a) with respect to such unit for all preceding taxable years.

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

''(1) ABATEMENT COST.—

''(A) IN GENERAL.—The term 'abatement cost' means, with respect to any eligible dwelling unit—

''(i) the cost for a certified risk assessor to conduct an assessment to determine the presence of a lead-based paint hazard,

''(ii) the cost for a certified lead abatement supervisor to perform the removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil when lead-based paint hazards are present in such paint, dust, or soil,

''(iii) the cost for a certified lead abatement supervisor to perform all preparation, cleanup, disposal, and postabatement clearance testing activities associated with the activities described in clause (ii), and

''(iv) costs incurred by or on behalf of any occupant of such dwelling unit for any relocation which is necessary to achieve occupant protection (as defined under section 1345 of title 24, Code of Federal Regulations).

''(B) LIMITATION.—The term 'abatement cost' does not include any cost to the extent such cost is funded by any grant, contract, or otherwise by another person (or any governmental agency).

''(2) ELIGIBLE DWELLING UNIT.—

''(A) IN GENERAL.—The term 'eligible dwelling unit' means any dwelling unit—

''(i) placed in service before 1978,

''(ii) located in the United States, and

''(iii) determined by a certified risk assessor to have a lead-based paint hazard.

''(B) DWELLING UNIT.—The term 'dwelling unit' has the meaning given such term by section 280A(f)(1).

''(3) LEAD-BASED PAINT HAZARD.—The term 'lead-based paint hazard' has the meaning given such term under part 745 of title 40, Code of Federal Regulations.

''(4) CERTIFIED LEAD ABATEMENT SUPERVISOR.—The term 'certified lead abatement supervisor' means an individual certified by the Environmental Protection Agency pursuant to section 745.226 of title 40, Code of Federal Regulations, or an appropriate State agency pursuant to section 745.325 of title 40, Code of Federal Regulations.

''(5) CERTIFIED INSPECTOR.—The term 'certified inspector' means an inspector certified by the Environmental Protection Agency pursuant to section 745.226 of title 40, Code of Federal Regulations, or an appropriate State agency pursuant to section 745.325 of title 40, Code of Federal Regulations.

''(6) CERTIFIED RISK ASSESSOR.—The term 'certified risk assessor' means a risk assessor

certified by the Environmental Protection Agency pursuant to section 745.226 of title 40, Code of Federal Regulations, or an appropriate State agency pursuant to section 745.325 of title 40, Code of Federal Regulations.

''(7) DOCUMENTATION REQUIRED FOR CREDIT ALLOWANCE.—No credit shall be allowed under subsection (a) with respect to any eligible dwelling unit unless—

''(A) after lead abatement is complete, a certified inspector or certified risk assessor provides written documentation to the taxpayer that includes—

''(i) a certification that the postabatement procedures (as defined by section 745.227 of title 40, Code of Federal Regulations) have been performed and that the unit does not contain lead dust hazards (as defined by section 745.227(e)(8)(viii) of title 40, Code of Federal Regulations), and

''(ii) documentation showing that the lead abatement meets the requirements of this section, and

''(B) the taxpayer files with the appropriate State agency—

''(i) the documentation described in subparagraph (A),

''(ii) a receipt from the certified risk assessor documenting the costs of determining the presence of a lead-based paint hazard,

''(iii) a receipt from the certified lead abatement supervisor documenting the abatement cost (other than the costs described in paragraph (1)(A)(i)), and

''(iv) a statement indicating the age of the dwelling unit.

''(8) BASIS REDUCTION.—The basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit (determined without regard to subsection (d)).

''(d) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(2) the sum of the credits allowable under subpart A and sections 27, 29, 30, and 30A for the taxable year.

''(e) CARRYFORWARD ALLOWED.—

''(1) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (d) for such taxable year (referred to as the 'unused credit year' in this subsection), such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

''(2) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under paragraph (1).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking ''and'' in paragraph (27), by striking the period and inserting '', and'' in paragraph (28), and by inserting at the end the following new paragraph:

''(29) in the case of an eligible dwelling unit with respect to which a credit for lead abatement was allowed under section 30B, to the extent provided in section 30B(c)(8).''.

(2) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following new item:

''Sec. 30B. Home lead abatement.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to abatement costs incurred after December 31, 2003, in taxable years ending after that date.

By Mr. AKAKA (for himself, Mr. LEVIN, Mr. LEAHY, Mr. DURBIN, and Mr. DAYTON):

S. 1229. A bill to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes; to the Committee on Governmental Affairs.

Mr. AKAKA. Mr. President. Today I rise to introduce the Federal Employee Protection of Disclosures Act with Senators LEVIN, LEAHY, DURBIN, and DAYTON to amend the Whistleblower Protection Act, WPA. These amendments are necessary to protect Federal employees from retaliation and protect the American people from government waste, fraud, and abuse. The Federal Employee Protection of Disclosures Act builds on the foundation laid in the 107th Congress with S. 995 and S. 3070, the latter of which was favorably reported by the Governmental Affairs Committee last year. The bill also incorporates recommendations received during a hearing I chaired on similar legislation in 2001.

Last year, Time magazine honored Sherron Watkins, Colleen Rowley, and Cynthia Cooper as its ''persons of the year.'' These brave women are whistleblowers—Colleen Rowley is the Minneapolis FBI agent who penned the memo on the FBI headquarter's handling of the Zacarias Mousssoui case. In 2002, Ms. Rowley and the two other women went public with disclosures of mismanagement and wrongdoing within their workplaces. They captured the nation's attention and earned our respect in their roles as whistleblowers. Congress encourages Federal employees like Ms. Rowley to come forward with information of threats to public safety and health through the WPA, which has been amended twice in order to shore up congressional intent.

Once again, Congress must act to guarantee protections from retaliation for Federal whistleblowers. First and foremost, our bill would codify the repeated and unequivocal statements of congressional intent that Federal employees are to be protected when making ''any disclosure'' evidencing violations of law, gross mismanagement, or a gross waste of funds. The bill would also clarify the test that must be met to prove that a Federal employee reasonably believed that his or her disclosure was evidence of wrongdoing. Despite the clear language of the WPA that an employee is protected from disclosing information he or she reasonably believes evidences a violation, the Federal Circuit Court of Appeals, which has sole jurisdiction over whistleblower cases, ruled in 1999 that the reasonableness review must begin with the presumption that public officers perform their duties in good faith and that this presumption stands unless there is ''irrefragable proof'' to the contrary. By definition, irrefragable means impossible to refute. To address this unreasonable burden placed on whistleblowers, our bill would replace the ''irrefragable proof'' standard with ''substantial evidence.''

The bill would provide some method of relief for those whistleblowers who face retaliation by having their security clearance removed. According to former Special Counsel Elaine Kaplan, removal of a security clearance in this manner is a way of camouflaging retaliation. To address this issue, the bill would make it a prohibited personnel practice for a manager to suspend, revoke or take other action with respect to an employee's security clearance in retaliation for whistleblowing and allow the Merit Systems Protection Board, MSPB, to review the action. Under an expedited review process, the MSPB may issue declaratory and other appropriate relief, but may not direct the President to restore a security clearance. MSPB and subsequent Congressional review of the agency's action provides sound oversight for this process without encroaching upon the President's authority in the national security arena.

The measure would also provide independent litigating authority to the Office of Special Counsel, OSC. Under current law, OSC has no authority to request MSPB to reconsider its decision or to seek review of a MSPB decision by the Federal Circuit. The limitation undermines both OSC's ability to protect whistleblowers and the integrity of the WPA. As such, our bill would provide OSC authority to appear in any civil action brought in connection with the WPA and obtain review of any MSPB order where OSC determines MSPB erred and the case will impact the enforcement of the WPA. The bill would also help protect the integrity of the Act by removing sole jurisdiction of such cases from the Federal Circuit and provide for review of whistleblower cases in the same manner that is afforded in Equal Employment Opportunity Commission cases. This review system is designed to address holdings by the Federal Circuit which have repeatedly ignored congressional intent.

Enactment of the Federal Employee Protection of Disclosures Act will strengthen the rights and protections afforded to Federal whistleblowers and encourage the disclosure of information vital to an effective government. Congress should act quickly to assure whistleblowers that disclosing illegal activities within their agencies will not be met with retaliation. I urge my colleagues to join with me in protecting the dedicated Federal employees who come forward to disclose wrongdoing to help the American people.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1229

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Employee Protection of Disclosures Act''.

(b) CLARIFICATION OF DISCLOSURES COVERED.—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, that the employee or applicant reasonably believes is evidence of''; and

(B) in clause (i), by striking ''a violation'' and inserting ''any violation'';

(2) in subparagraph (B)—

(A) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information that the employee or applicant reasonably believes is evidence of''; and

(B) in clause (i), by striking ''a violation'' and inserting ''any violation (other than a violation of this section)''; and

(3) by adding at the end the following:

''(C) a disclosure that—

''(i) is made by an employee or applicant of information required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs that the employee or applicant reasonably believes is direct and specific evidence of—

''(I) any violation of any law, rule, or regulation;

''(II) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

''(III) a false statement to Congress on an issue of material fact; and

''(ii) is made to—

''(I) a member of a committee of Congress having a primary responsibility for oversight of a department, agency, or element of the Federal Government to which the disclosed information relates and who is authorized to receive information of the type disclosed;

''(II) any other Member of Congress who is authorized to receive information of the type disclosed; or

''(III) an employee of Congress who has the appropriate security clearance and is authorized to receive information of the type disclosed.''.

(c) COVERED DISCLOSURES.—Section 2302(b) of title 5, United States Code, is amended—

(1) in the matter following paragraph (12), by striking ''This subsection'' and inserting the following:

''This subsection''; and

(2) by adding at the end the following:

''In this subsection, the term 'disclosure' means a formal or informal communication or transmission.''.

(d) REBUTTABLE PRESUMPTION.—Section 2302(b) of title 5, United States Code, is amended by adding after the matter following paragraph (12) (as amended by subsection (c) of this section) the following:

''For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee who has authority to take, direct others to take, recommend, or approve any personnel action may be rebutted by substantial evidence.''.

(e) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS; SECURITY CLEARANCES; AND RETALIATORY INVESTIGATIONS.—

(1) PERSONNEL ACTION.—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(A) in clause (x), by striking ''and'' after the semicolon; and

(B) by redesignating clause (xi) as clause (xiv) and inserting after clause (x) the following:

''(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement;

''(xii) a suspension, revocation, or other determination relating to a security clearance;

''(xiii) an investigation of an employee or applicant for employment because of any activity protected under this section; and''.

(2) PROHIBITED PERSONNEL PRACTICE.—Section 2302(b) of title 5, United States Code, is amended—

(A) in paragraph (11), by striking ''or'' at the end;

(B) in paragraph (12), by striking the period and inserting a semicolon; and

(C) by inserting after paragraph (12) the following:

''(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement:

'' 'These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.'; or

''(14) conduct, or cause to be conducted, an investigation of an employee or applicant for employment because of any activity protected under this section.''.

(3) BOARD AND COURT REVIEW OF ACTIONS RELATING TO SECURITY CLEARANCES.—

(A) IN GENERAL.—Chapter 77 of title 5, United States Code, is amended by inserting after section 7702 the following:

''§ 7702a. Actions relating to security clearances

''(a) In any appeal relating to the suspension, revocation, or other determination relating to a security clearance, the Merit Systems Protection Board or any reviewing court—

''(1) shall determine whether section 2302 was violated;

''(2) may not order the President to restore a security clearance; and

''(3) subject to paragraph (2), may issue declaratory relief and any other appropriate relief.

''(b)(1) If, in any final judgment, the Board or court declares that any suspension, revocation, or other determination with regards to a security clearance was made in violation of section 2302, the affected agency shall conduct a review of that suspension, revocation, or other determination, giving great weight to the Board or court judgment.

''(2) Not later than 30 days after any Board or court judgment declaring that a security clearance suspension, revocation, or other determination was made in violation of section 2302, the affected agency shall issue an unclassified report to the congressional committees of jurisdiction (with a classified annex if necessary), detailing the circumstances of the agency's security clearance suspension, revocation, or other determination. A report under this paragraph shall include any proposed agency action with regards to the security clearance.

''(c) An allegation that a security clearance was revoked or suspended in retaliation for a protected disclosure shall receive expedited review by the Office of Special Counsel, the Merit Systems Protection Board, and any reviewing court.''.

(B) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 77 of title 5, United States Code, is amended by inserting after the item relating to section 7702 the following:

''7702a. Actions relating to security clearances.''.

(f) EXCLUSION OF AGENCIES BY THE PRESIDENT.—Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

''(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency; and

''(II) as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or''.

(g) ATTORNEY FEES.—Section 1204(m)(1) of title 5, United States Code, is amended by striking ''agency involved'' and inserting ''agency where the prevailing party is employed or has applied for employment''.

(h) COMPENSATORY DAMAGES.—Section 1214(g)(2) of title 5, United States Code, is amended by inserting ''compensatory or'' after ''forseeable''.

(i) DISCIPLINARY ACTION.—Section 1215 of title 5, United States Code, is amended in subsection (a), by striking paragraph (3) and inserting the following:

''(3)(A) A final order of the Board may impose—

''(i) disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, or reprimand;

''(ii) an assessment of a civil penalty not to exceed $1,000; or

''(iii) any combination of disciplinary actions described under clause (i) and an assessment described under clause (ii).

''(B) In any case in which the Board finds that an employee has committed a prohibited personnel practice under section 2302(b)(1), (8), or (9), the Board may order disciplinary action if the Board finds that the activity or status protected under section 2302(b)(1), (8), or (9) was a motivating factor for the employee's decision to take, fail to take, or threaten to take or fail to take a personnel action, even if other factors also motivated the decision.''.

(j) DISCLOSURES TO CONGRESS.—Section 2302 of title 5, United States Code, is amended by adding at the end the following:

''(f) Each agency shall establish a process that provides confidential advice to employees on making a lawful disclosure to Congress of information that is specifically required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.''.

(k) AUTHORITY OF SPECIAL COUNSEL RELATING TO CIVIL ACTIONS.—

(1) REPRESENTATION OF SPECIAL COUNSEL.—Section 1212 of title 5, United States Code, is amended by adding at the end the following:

''(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Special Counsel may appear for the Special Counsel and represent the Special Counsel in any civil action brought in connection with section 2302(b)(8) or subchapter III of chapter 73, or as otherwise authorized by law.''.

(2) JUDICIAL REVIEW OF MERIT SYSTEMS PROTECTION BOARD DECISIONS.—Section 7703 of title 5, United States Code, is amended by adding at the end the following:

''(e)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Special Counsel. The Special Counsel may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Special Counsel determines, in the discretion of the Special Counsel, that the Board erred in deciding a case arising under section 2302(b)(8) or subchapter III of chapter 73 and that the Board's decision will have a substantial impact on the enforcement of section 2302(b)(8) or subchapter III of chapter 73. If the Special Counsel was not a party or did not intervene in a matter before the Board, the Special Counsel may not petition for review of a Board decision under this section unless the Special Counsel first petitions the Board for reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceedings before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

''(2) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, this paragraph shall apply to any review obtained by the Special Counsel. The Special Counsel may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2) if the Special Counsel determines, in the discretion of the Special Counsel, that the Board erred in deciding a case arising under section 2302(b)(8) or subchapter III of chapter 73 and that the Board's decision will have a substantial impact on the enforcement of section 2302(b)(8) or subchapter III of chapter 73. If the Special Counsel was not a party or did not intervene in a matter before the Board, the Special Counsel may not petition for review of a Board decision under this section unless the Special Counsel first petitions the Board for reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceedings before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the court of appeals.''.

(l) JUDICIAL REVIEW.—

(1) IN GENERAL.—Section 7703(b) of title 5, United States Code, is amended by striking paragraph (1) and inserting the following:

''(b)(1)(A) Except as provided in subparagraph (B) and paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.

''(B) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2). Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.''.

(2) REVIEW OBTAINED BY OFFICE OF PERSONNEL MANAGEMENT.—Section 7703 of title 5, United States Code, is amended by striking subsection (d) and inserting the following:

''(d)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

''(2) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2) if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.''.

(m) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.—

(1) IN GENERAL.—

(A) REQUIREMENT.—Each agreement in Standard Forms 312 and 4414 of the Government and any other nondisclosure policy, form, or agreement of the Government shall contain the following statement: ''These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.''

(B) ENFORCEABILITY.—Any nondisclosure policy, form, or agreement described under subparagraph (A) that does not contain the statement required under subparagraph (A) may not be implemented or enforced to the extent such policy, form, or agreement is inconsistent with that statement.

(2) PERSONS OTHER THAN GOVERNMENT EMPLOYEES.—Notwithstanding paragraph (1), a nondisclosure policy, form, or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the Federal Government or a State or local government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that such forms do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

(n) CLARIFICATION OF WHISTLEBLOWER RIGHTS FOR CRITICAL INFRASTRUCTURE INFORMATION.—Section 214(c) of the Homeland Security Act of 2002 (Public Law 107–296) is amended by adding at the end the following: ''For purposes of this section a permissible use of independently obtained information includes the disclosure of such information under section 2302(b)(8) of title 5, United States Code.''.

(o) EFFECTIVE DATE.—This Act shall take effect 30 days after the date of enactment of this Act.

Mr. LEVIN. Mr. President, I am pleased to join Senators AKAKA, LEAHY, DURBIN and DAYTON today in introducing the Federal Employees Protection of Disclosures Act. Our bill strengthens the law protecting employees who blow the whistle on fraud, waste, and abuse in Federal programs.

Whistleblowers play a crucial role in ensuring that Congress and the public are aware of serious cases of waste,

fraud, and mismanagement in government. Whistleblowing is never more important than when our national security is at stake. Since the terrorist attacks of September 11, 2001, courageous individuals have stepped forward to blow the whistle on significant lapses in our efforts to protect the United States against potential future attacks. Most notably, FBI Agent Coleen Rowley alerted Congress to serious institutional problems at the FBI and their impact on the agency's ability to effectively investigate and prevent terrorism.

In another example, two Border Patrol agents from my State of Michigan, Mark Hall and Bob Lindemann, risked their careers when they blew the whistle on Border Patrol and INS policies that were compromising security on the Northern Border. Their disclosure led to my holding a hearing at the Permanent Subcommittee on Investigations in November 2001, that exposed serious deficiencies in the way Border Patrol and INS were dealing with aliens who were arrested while trying to enter the country illegally. Since the hearing, some of the most troublesome policies have been changed, improving the security situation and validating the two agents' concerns. Despite the fact that their concerns proved to be dead on, shortly after they blew the whistle, disciplinary action was proposed against the two agents. Fortunately in this case, whistleblower protections worked. The Office of Special Counsel conducted an investigation and the decision to discipline the agents was reversed. However, that disciplinary action was proposed in the first place is a troubling reminder of how important it is for us to both strengthen protections for whistleblowers and empower the Office of Special Counsel to discipline managers who seek to muzzle employees.

Agent Rowley, Mark Hall and Bob Lindemann are simply the latest in a long line of Federal employees who have taken great personal risks in blowing the whistle on government waste, fraud, and mismanagement. Congress has long recognized the obligation we have to protect a Federal employee when he or she discloses evidence of wrongdoing in a federal program. If an employee reasonably believes that a fraud or mismanagement is occurring, and that employee has the courage and the sense of responsibility to make that fraud or mismanagement known, it is our duty to protect the employee from any reprisal. We want federal employees to identify problems so we can fix them, and if they fear reprisal for doing so, then we are not only failing to protect the whistleblower, but we are also failing to protect the taxpayer.

I sponsored the Whistleblower Protection Act in 1989 which strengthened and clarified whistleblower rights, as well as the bill passed by Congress to strengthen the law further in 1994. Unfortunately, however, repeated holdings by the United States Court of Appeals for the Federal Circuit have corrupted the intent of Congress, with the result that additional clarifying language is sorely needed. The case of LaChance versus White represents perhaps the most notable example of the Federal Circuit's misinterpretation of the whistleblower law.

In LaChance, decided on May 14, 1999, the court imposed an unfounded and virtually unattainable standard on Federal employee whistleblowers in proving their cases. In that case, John E. White was an education specialist for the Air Force who spoke out against a new educational system that purported to mandate quality standards for schools contracting with the Air Force bases. White criticized the new system as counterproductive because it was too burdensome and seriously reduced the education opportunities available on base. After making these criticisms, local agency officials reassigned White, relieving him of his duties and allegedly isolating him. However, after an independent management review supported White's concerns, the Air Force canceled the program White had criticized. White appealed the reassignment in 1992 and the case has been in litigation ever since.

The administrative judge initially dismissed White's case, finding that his disclosures were not protected by the Whistleblower Protection Act. The MSPB, however, reversed the administrative judge's decision and remanded the case back to the administrative judge, holding that since White disclosed information he reasonably believed evidenced gross mismanagement, this disclosure was protected under the Act. On remand, the administrative judge found that the Air Force had violated the Whistleblower Protection Act and ordered the Air Force to return White to his prior status; the MSPB affirmed the decision of the administrative judge. OPM petitioned the Federal Circuit for a review of the board's decision. The Federal Circuit subsequently reversed the MSPB's decision, holding that there was not adequate evidence to support a violation under the Whistleblower Protection Act. The Federal Circuit held that the evidence that White was a specialist on the subject at issue and aware of the alleged improper activities and that his belief was shared by other employees was not sufficient to meet the ''reasonable belief'' test in the law. The court held that ''the board must look for evidence that it was reasonable to believe that the disclosures revealed misbehavior'' by the Air Force. The court went on to say: ''In this case, review of the Air Force's policy and implementation via the QES standards might well show them to be entirely appropriate, even if not the best option. Indeed, this review would start out with a presumption that public officers perform their duties correctly, fairly, in good faith, and in accordance with the law and governing regulations. . . . And this presumption stands unless there is ''irrefragable proof to the contrary'.''

It was appropriate for the Federal Circuit to remand the case to the MSPB to have it reconsider whether it was reasonable for White to believe that what the Air Force did in this case involved gross mismanagement. However, the Federal Circuit went on to impose a clearly erroneous and excessive standard for him to demonstrate his ''reasonable belief''—requiring him to provide ''irrefragable'' proof that the Air Force had engaged in gross mismanagement.

Irrefragable means ''undeniable, incontestable, incontrovertible, incapable of being overthrown.'' How can a Federal employee meet a standard of ''irrefragable'' in proving gross mismanagement? It is a virtually impossible standard of proof to meet. Moreover, there is nothing in the law or legislative history that even suggests such a standard applies to the Whistleblower Protection Act. The intent of the law is not for a Federal employee to act as an investigator and compile ''irrefragable'' proof that the Federal Government, in fact, committed fraud, waste or abuse. Rather, under the clear language of the statute, the employee needs only to have ''a reasonable belief'' that there is fraud, waste or abuse occurring in order to make a protected disclosure.

LaChance is only one example of the Federal Circuit misinterpreting the law. Our bill corrects LaChance and as well as several other Federal Circuit holdings. In addition, the bill strengthens the Office of Special Counsel and creates additional protections for federal employees who are retaliated against for blowing the whistle.

One of the most important issues addressed in the bill is to clarify again that the law is intended to protect a broad range of whistleblower disclosures. The legislative history supporting the 1994 Whistleblower Protection Act amendments emphasized: ''[I]t also is not possible to further clarify the clear language in section 2302(b)(8) that protection for ''any'' whistleblowing disclosure truly means ''any.'' A protected disclosure may be made as part of an employee's job duties, may concern policy or individual misconduct, and may be oral or written and to any audience inside or outside the agency, without restriction to time, place, motive or content.''

Despite this clear Congressional intent that was clearly articulated in 1994, the Federal Circuit has acted to push a number of whistleblower disclosures outside the protections of the whistleblower law. For example, in Horton versus the Department of the Navy, the Federal Circuit ruled that a whistleblower's disclosures to co-workers, or to the wrong-doer, or to a supervisor were not protected by the WPA. In Willis versus the Department of Agriculture, the court ruled that a whistleblower's disclosures to officials in

the agency chain of command or those made in the course of normal job duties were not protected. In Huffman versus Office of Personnel Management, the Federal Circuit reaffirmed Horton and Willis. And in Meuwissen versus Department of Interior, the Federal Circuit held that a whistleblower's disclosures of previously known information do not qualify as ''disclosures'' under the WPA. All of these rulings violate clear Congressional intent to afford broad protection to whistleblower disclosures.

In order to make it clear that any lawful disclosure that an employee or job applicant reasonably believes is evidence of waste, fraud, abuse, or gross mismanagement is covered by the WPA, the bill codifies previous statements of Congressional intent. Using the 1994 legislative history, it amends the whistleblower statute to cover any disclosure of information without restriction to time, place, form, motive or context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties that the employee or applicant reasonably believes is credible evidence of any violation of any law, rule, or regulation, or other misconduct specified in the whistleblower law. I want to emphasize here that, other than the explicitly listed exceptions identified in the statute, we intend for there to be no exceptions, inferred or otherwise, as to what is a protected disclosure. And the prohibition on inferred exceptions is intended to apply to all protected speech categories in section 2302(b)(8) of the law. The intent here, again, is to make it clear that when the WPA speaks of protecting disclosures by federal employees ''any'' means ''any.''

The bill also addresses the clearly erroneous standard established by the Federal Circuit's LaChance decision I mentioned earlier. Rather than needing ''irrefragable proof'' to overcome the presumption that a public officer performed his or her duties correctly, fairly, in good faith, and in accordance with the law and regulations, the bill makes it clear that the whistleblower can rebut this presumption with ''substantial evidence.'' This burden of proof is a far more reasonable and appropriate standard for whistleblowing cases.

In the 1994 WPA amendments, Congress attempted to expand relief for whistleblowers by replacing ''compensatory'' damages with all direct or indirect ''consequential'' damages. Again, despite clear Congressional intent, the Federal Circuit has narrowed the scope of relief available to whistleblowers who have been hurt by adverse personnel actions. Our legislation would clarify the law to provide whistleblowers with relief for ''compensatory or consequential damages.''

The Federal Circuit's repeated misinterpretations of the whistleblower law are unacceptable and demand Congressional action. In response to the court's inexplicable and inappropriate rulings, our bill would suspend for five years the Federal Circuit's exclusive jurisdiction over whistleblower appeals. It would instead allow a whistleblower to file a petition to review a final order or final decision of the MSPB in the Federal Circuit or in any other United States appellate court of competent jurisdiction as defined under 5 U.S.C. 7703(b)(2). In most cases, using another court would mean going to the federal circuit where the contested personnel action took place. This five year period would allow Congress to evaluate whether other appellate courts would issue whistleblower decisions which are consistent with the Federal Circuit's interpretation of WPA protections and guide Congressional efforts to clarify the law if necessary.

In addition to addressing jurisdictional issues and troublesome Federal Circuit precedents, our bill would also make important additions to the list of protected disclosures. First, it would subject certain disclosures of classified information to whistleblower protections. However, in order for a disclosure of classified information to be protected, the employee would have to possess a reasonable belief that the disclosure was direct and specific evidence of a violation of law, rule or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, a substantial and specific danger to public health or safety, or a false statement to Congress on an issue of material fact. A whistleblower must also limit the disclosure to a member of Congress or staff of the executive or legislative branch holding the appropriate security clearance and authorized to receive the information disclosed. Federal agencies covered by the WPA would be required to establish a process to provide confidential advice to employees on how to lawfully make a protected disclosure of classified information to Congress.

Current law permits Federal employees to file a case at the MSPB when they feel that a manager has taken a personnel action against them in retaliation for blowing the whistle. The legislation would add three new personnel actions to the list of adverse actions that cannot be taken against whistleblowers for engaging in protected activity. These actions would include enforcement of any nondisclosure policy, form or agreement against a whistleblower for making a protected disclosure; the suspension, revocation, or other determination relating to a whistleblower's security clearance; and an investigation of an employee or applicant for employment if taken due to their participation in whistleblowing activity.

It is important to note that, if it is demonstrated that a security clearance was suspended or revoked in retaliation for whistleblowing, the legislation limits the relief that the MSPB and reviewing court can order. The bill specifies that the MSPB or reviewing court may issue declaratory and other appropriate relief but may not direct a security clearance to be restored. Appropriate relief may include back pay, an order to reassign the employee, attorney fees, or any other relief the Board or court is authorized to provide for other prohibited personnel practices. In addition, if the Board finds an action on a security clearance to have been illegal, it may bar the agency from directly or indirectly taking any other personnel action based on that illegal security clearance action. Our legislation would also require the agency to review and provide a report to Congress detailing the circumstances of the agency's security clearance decision, and authorizes expedited MSPB review of whistleblower cases where a security clearance was revoked or suspended. The latter is important because a person whose clearance has been suspended or revoked and whose job responsibilities require clearance may be unable to work while their case is being considered.

Our bill would also add two prohibited personnel practices to the whistleblower law. First, it would codify the ''anti-gag'' provision that has been in force since 1988, by virtue of its inclusion in appropriations bills. Second, it would prohibit a manager from initiating an investigation of an employee or applicant for employment because they engaged in a protected activity, including whistleblowing.

Another issue addressed in the bill involves certain employees who are excluded from the WPA. Among these are employees who hold ''confidential policy-making positions.'' In 1994, Congress amended the WPA to keep agencies from designating employees confidential policymakers after the employees filed whistleblower complaints. The WPA also allows the President to exclude from WPA jurisdiction any agency whose principal function is the conduct of foreign intelligence or counterintelligence activities. Our legislation maintains this authority but makes it clear that a decision to exclude an agency from WPA protections must also be made prior to a personnel action being taken against a whistleblower from that agency. This provision is necessary to ensure that agencies cannot argue that employees are exempt from whistleblower protections after an employee files a claim that they were retaliated against.

Another key section of the bill would strengthen the Office of Special Counsel. OSC is the independent federal agency responsible for investigating and prosecuting federal employee complaints of whistleblower retaliation. Current law, however, limits OSC's ability to effectively enforce and defend whistleblower laws. For example, the law provides the OSC with no authority to request the Merit Systems Protection Board to reconsider one of its decisions or to seek appellate review of an MSPB decision. Even when

another party petitions for a review of a MSPB decision, OSC is typically denied the right to participate in the proceedings.

Our bill would provide explicit authority for the Office of Special Counsel to appear in any civil action brought in connection with the whistleblower law. In addition, it would authorize OSC to obtain circuit court review of any MSPB order in a whistleblowing case if the OSC determines the Board erred and the case would have a substantial impact on the enforcement of the whistleblower statute. In a letter to me addressing these provisions, Special Counsel Elaine Kaplan said, ''I believe that these changes are necessary, not only to ensure OSC's effectiveness, but to address continuing concerns about the whittling away of the WPA's protections by narrow judicial interpretations of the law.'' I ask unanimous consent that the OSC letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. OFFICE OF SPECIAL COUNSEL,
Washington, DC, September 11, 2002.

Hon. CARL LEVIN,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEVIN: Thank you for giving me the opportunity to comment on the proposed Title VI of H.R. 5005, concerning the protection of federal employee whistleblowers.

As the head of the U.S. Office of Special Counsel (OSC), the independent federal agency that is responsible for investigating and prosecuting federal employees' complaints of whistleblower retaliation, I share your recognition that it is crucial to ensure that the laws protecting whistleblowers are strong and effective. Federal employees are often in the best position to observe and identify official misconduct or malfeasance as well as dangers to the public health and safety, and the national security.

Now, perhaps more than ever before, our national interest demands that federal workers feel safe to come forward to bring appropriate attention to these conditions so that they may be corrected. Further, and again more than ever, the public now needs assurance that the workforce which is carrying out crucial operations is alert, and that its leaders welcome and encourage their constructive participation in making the government a highly efficient and effective steward of the public interest.

To these ends, Title VI contains a number of provisions that will strengthen the Whistleblower Protection Act (WPA) and close loopholes in the Act's coverage. The amendment would reverse the effects of several judicial decisions that have imposed unduly narrow and restrictive tests for determining whether employees qualify for the protection of the WPA. These decisions, among other things, have held that employees are not protected against retaliation when they make their disclosures in the line of duty or when they confront subject officials with their suspicions of wrongdoing. They have also made it more difficult for whistleblowers to secure the Act's protection by interposing what the Court of Appeal for the Federal Circuit has called an ''irrefragable'' presumption that government officials perform their duties lawfully and in good faith.

In addition to reversing these rulings, Title VI would grant the Special Counsel independent litigating authority and the right to request judicial review of decisions of the Merit Systems Protection Board (MSPB) in cases that will have a substantial impact upon the enforcement of the WPA. I firmly believe that these changes are necessary, not only to ensure OSC's effectiveness, but to address continuing concerns about the whittling away of the WPA's protections by narrow judicial interpretations of the law. The changes would ensure that, OSC, the government agency charged with protecting whistleblowers, will have a meaningful opportunity to participate in the shaping of the law.

Further, Title VI would strengthen OSC's capacity to use its disciplinary action authority to deter agency supervisors, managers, and other officials from engaging in retaliation, and to punish those who do so. The amendment does this in two ways. First, it clarifies the burden of proof in disciplinary action cases that OSC brings by employing the test first set forth by the Supreme Court in Mt. Healthy School District v. Board of Education. Under this test, in order to secure discipline of an agency official accused of engaging in whistleblower retaliation, OSC would have to show that protected whistleblowing was a ''significant, motivating factor'' in the decision to take or threaten to take a personnel action. If OSC made such a showing, the MSPB would order appropriate discipline unless the official showed, by preponderant evidence, that he or she would have taken or threatened to take the same action even had there been no protected activity.

This change is necessary in order to ensure that the burden of proof in these cases is not so onerous as to make it virtually impossible to secure discipline against retaliators. Under current law, OSC bears the unprecedented burden of demonstrating that protected activity was the but-for cause of an adverse personnel action against a whistleblower. The amendment would correct the imbalance by imposing the well-established Mt. Healthy test in these cases.

In addition, the bill would relieve OSC of attorney fee liability in disciplinary action cases in which it ultimately does not prevail. The amendment would shift liability for fees to the manager's employing agency, where an award of fees would be in the interest of justice. The employing agency would indemnify the manager for these costs which would have been incurred by him in the course of performing his official duties.

Under current law, if OSC ultimately does not prevail in a case it brings against a manager whom our investigation shows has engaged in retailiation, then we must pay attorney fees, even if our prosecution decision was an entirely reasonable one. For a small agency like OSC, with a limited budget, the specter of having to pay large attorney fee awards simply because we do not ultimately prevail in a case, is a significant obstacle to our ability to use this important authority to hold managers accountable. It is, moreover, an unprecedented burden; virtually all fee shifting provisions which could result in an award of fees against a government agency, depend upon a showing that the government agency has acted unreasonably or in bad faith.

In addition to these provisions, the bill would also provide that for a period of five years, beginning on February 1, 2003, there would be multi-circuit review of decisions of the MSPB, just as there is now multi-circuit review of decisions of the MSPB's sister agency, the Federal Labor Relations Authority. This experiment will give Congress the opportunity to judge whether providing broader perspectives of all of the nation's courts of appeals will enhance the development of the law under the WPA.

There are several other provisions of the amendments that would strengthen the Act's coverage and remedies. The amendments, for example, would extend coverage of the WPA to circumstances in which an agency initiated an investigation of an employee or applicant in reprisal for whistleblowing or where an agency implemented an illegal nondisclosure form or policy. The amendments also would authorize an award of compensatory damages in federal employee whistleblower cases. Such awards are authorized for federal employees under the civil rights acts, and for environmental and nuclear whistleblowers, among others, under other federal statutes. Given the important public policies underlying the WPA, it seems appropriate that the same sort of make whole relief should be available to federal employee whistleblowers.

Finally, Title VI contains a provision that would provide relief to employees who allege that their security clearances were denied or revoked because of protected whistleblowers, without interfering with the longstanding authority of the President to make security clearance determinations. The amendment would allow employees to file OSC complaints alleging they suffered a retaliatory adverse security clearance determination. OSC would be given the authority to investigate such complaints and the MSPB would have the authority to issue declaratory and appropriate relief other than ordering the restoration of the clearance. Further, where the Board found retaliation, the employing agency would be required to conduct its own investigation of the revocation and report back to Congress.

The amendment provides a balanced resolution of the tension between protecting national security whistleblowers against retaliation and maintaining the President's traditional prerogative to decide who will have access to classified information. Especially in light of the current heightened concerns about issues of national security, this change in the law is clearly warranted.

Thank you again for providing me with an opportunity to comment on these amendments, and for your continuing interest in the work of the Office of Special Counsel.

Sincerely,

ELAINE KAPLAN.

Mr. LEVIN. OSC currently has the authority to pursue disciplinary action against managers who retaliate against whistleblowers. However, Federal Circuit decisions, like LaChance, have undermined the agency's ability to successfully pursue such cases. The Special Counsel has said that ''change is necessary in order to ensure that the burden of proof in these cases is not so onerous as to make it virtually impossible to secure disciplinary action against retaliators.'' In addition to it being difficult to win, if the OSC loses a disciplinary case, it has to pay the legal fees of those against whom OSC initiates disciplinary action. In its letter, OSC said that ''the specter of having to pay large attorney fee awards . . . is a significant obstacle to our ability to use this important authority to hold managers accountable.'' Our bill addresses these problems by establishing a reasonable burden of proof for disciplinary actions and requiring the employing agency, not the OSC, to reimburse the prevailing party for attorney fees in a disciplinary proceeding.

Finally, the bill addresses a new issue that has arisen in connection

with the recent enactment of the Homeland Security Act or HSA. To evaluate the vulnerability to terrorist attack of certain critical infrastructure such as chemical plants, computer networks and other key facilities, the HSA asks private companies that own these facilities to submit unclassified information about them to the government. In doing so, the law also created some ambiguity on the question of whether federal employee whistleblowers would be protected by the WPA if they should disclose information that has been independently obtained by the whistleblower about such facilities but which may also have been disclosed to the government as under the critical infrastructure information program.

While I believe it was Congress' intent to extend whistleblower protections to federal employees who disclose such independently obtained information, the law's ambiguities are troublesome in the context of the tendency of the Federal Circuit to narrowly construe the scope of protections afforded by the WPA. Our bill would thus clarify that whistleblower protections do extend to federal employees who disclose independently obtained information that may also have been disclosed to the government as part of the critical infrastructure information program.

We need to encourage federal employees to blow the whistle on waste, fraud and abuse in federal government agencies and programs. These people take great risks and often face enormous obstacles in doing what they believe is right. The Congress and the country owe a particular debt of gratitude to those whistleblowers who put their careers on the line to protect national security. Since September 11, 2001, we have seen a number of examples of how crucial people like Coleen Rowley, Mark Hall and Bob Lindemann are to keeping our country safe. I request unanimous consent to print a letter from Agent Rowley in the RECORD. In the letter she says that when she blew the whistle, she was lucky enough to garner the support of many of her colleagues and members of Congress. However, her letter warns that for every Coleen Rowley, ''there are many more who do not benefit from the relative safety of public notoriety.'' It is to protect those responsible, courageous many that we offer this legislation. We need more like them.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SEPTEMBER 2, 2002.

DEAR SENATORS: I have proudly served in federal law enforcement for over 21 years. Prior to my personal involvement in a specific matter, I did not fully appreciate the strong disincentives that sometimes keep government employees from exposing waste, fraud, abuse, or other failures they witness on the job. Nor did I appreciate the strong incentives that do exist for agencies to avoid institutional embarrassment.

The decision to step forward with information that exposed my agency to scrutiny was one of the most difficult of my career. I did not come to it quickly or lightly. I first attempted to warn my superiors through regular channels. Only after those warnings failed to bring about the necessary response and congressional inquiry was initiated, did it go outside the agency with my concerns. I had no intention or desire to be in the public spotlight, so I did not go to the news media. I provided the information to Members of Congress with oversight responsibility. I felt compelled to do so because my responsibility is to the American people, not to a government agency.

Unfortunately, the cloak of secrecy which is necessary for the effective operation of government agencies involved in national security and criminal investigations fosters an environment where the incentives to avoid embarrassment and the disincentives to step forward combine. When that happens, the public loses. We need laws that strike a better balance, that are able to protect effective government operation without sacrificing accountability to the public. I was lucky enough to garner a good deal of support from my colleagues in the Minneapolis office and Members of Congress. But for every one like me, there are many more who do not benefit from the relative safety of public notoriety. They need credible, functioning rights and remedies to retain the freedom to warn.

I also need to state that I write this letter in my personal capacity, and that it reflects my personal views only, not those of the government agency for which I work.

Thank you for your consideration.

COLEEN ROWLEY.

Mr. LEVIN. I ask unanimous consent to print in the RECORD a section-by-section explanation of the bill.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS OF THE FEDERAL EMPLOYEE PROTECTION OF DISCLOSURES ACT

The Federal Employee Protection of Disclosures Act would strengthen protections for federal employees who blow the whistle on waste, fraud and abuse in the federal government.

Protected Whistleblower Disclosures. To correct court decisions improperly limiting the disclosures protected by the Whistleblower Protection Act (WPA), section (b) of the bill would clarify Congressional intent that the law covers 'any' whistleblowing disclosure, whether that disclosure is made as part of an employee's job duties, concerns policy or individual misconduct, is oral or written, or is made to any audience inside or outside an agency, and without restriction to time, place, motive or context. This section would also protect certain disclosures of classified information to Congress when the disclosure is to a Member or legislative staff holding an appropriate security clearance and authorized to receive the type of information disclosed.

Informal Disclosures. Section (c) would clarify the definition of ''disclosure'' to include a formal or informal communication or transmission.

Irrefragable Proof. In LaChance v. White, the U.S. Court of Appeals for the Federal Circuit imposed an erroneous standard for determining when an employee makes a protected disclosure under the WPA. Under the clear language of the statute, an employee need only have a reasonable belief that he or she is providing evidence of fraud, waste or abuse to make a protected disclosure. But the court ruled that an employee had to have ''irrefragable proof'' meaning undeniable and incontestable proof to overcome the presumption that a public officer is performing their duties in accordance with law. Section (d) would replace this unreasonable standard of proof by providing that a whistleblower can rebut the presumption with ''substantial evidence.''

Prohibited Personnel Actions. Section (e)(1) would add three actions to the list of prohibited personnel actions that may not be taken against whistleblowers for protected disclosures: enforcement of a nondisclosure policy, form or agreement; suspension, revocation, or other determination relating to an employee's security clearance; and investigation of an employee or applicant for employment due to protected whistleblowing activities.

Nondisclosure Actions Against Whistleblowers. Section (e)(2) would bar agencies from implementing or enforcing against whistleblowers any nondisclosure policy, form or agreement that fails to contain specified language preserving the right of government employees to disclose certain protected information. It would also prohibit a manager from initiating an investigation of an employee or applicant for employment because they engaged in protected activity.

Retaliations Involving Security Clearances. Section (e)(3) would make it a prohibited personnel practice for a manager to suspend, revoke or take other action with respect to an employee's security clearance in retaliation for whistleblowing. This section would also authorize the Merit Systems Protection Board (MSPB) to conduct an expedited review of such matters and issue declaratory and other appropriate relief, but would not empower MSPB to restore a security clearance. If MSPB or a reviewing court were to find that a security clearance decision was retaliatory, the agency involved would be required to review its security clearance decision and issue a report to Congress explaining it.

Exclusions from WPA. Current law allows the President to exclude certain employees and agencies from the WPA if they perform certain intelligence related or policy making functions. In 1994, Congress amended the WPA to stop agencies from removing employees from WPA coverage after the employees filed whistleblower complaints. Section (f) would also require that removal of an agency from the WPA be made prior to a personnel action being taken against a whistleblower at that agency.

Attorney Fees. The Office of Special Counsel (OSC) has authority to pursue disciplinary action against managers who retaliate against whistleblowers. Currently, if OSC loses a disciplinary case, it must pay the legal fees of those against whom it initiated the action. Because the amounts involved could significantly deplete OSC's limited resources, section (g) would require the employing agency, rather than OSC, to reimburse the manager's attorney fees.

Compensatory Damages. In the 1994 WPA amendments, Congress attempted to expand relief for whistleblowers by replacing ''compensatory'' damages with direct and indirect ''consequential'' damages. Despite Congressional intent, the Federal Circuit narrowed the scope of relief available to whistleblowers. To correct the court's misinterpretation of the law, section (h) would provide whistleblowers with relief for compensatory or consequential damages.

Burden of Proof in Disciplinary Actions. Currently, when OSC pursues disciplinary action against managers who retaliate against whistleblowers, OSC must demonstrate that an adverse personnel action would not have occurred ''but for'' the whistleblower's protected activity. Section (i) would establish a more reasonable burden of proof by requiring OSC to demonstrate that the whistleblower's protected disclosure was

a ''motivating factor'' in the decision by the manager to take the adverse action, even if other factors also motivated the decision. This burden would be similar to the approach taken in the 1991 Civil Rights Act.

Disclosures to Congress. Section (j) would require agencies to establish a process to provide confidential advice to employees on how to lawfully make a protected disclosure of classified information to Congress.

Authority of Special Counsel. Under current law, OSC has no authority to request MSPB to reconsider a decision or seek appellate review of a MSPB decision. This limitation undermines OSC's ability to protect whistleblowers and integrity of the WPA. Section (k) would authorize OSC to appear in any civil action brought in connection with the WPA and request appellate review of any MSPB order where OSC determines MSPB erred and the case would have a substantial impact on WPA enforcement.

Judicial Review. In 1982, Congress replaced normal Administrative Procedures Act appellate review of MSPB decisions with exclusive jurisdiction in the U.S. Court of Appeals for the Federal Circuit. While the 1989 WPA and its 1994 amendments strengthened and clarified whistleblower protections, Federal Circuit holdings have repeatedly misinterpreted key provisions of the law. Subject to a five year sunset, section (l) would suspend the Federal Circuit's exclusive jurisdiction over whistleblower appeals and allow petitions for review to be filed either in the Federal Circuit or any other federal circuit court of competent jurisdiction.

Nondisclosure Restrictions on Whistleblowers. Section (m) would require all federal nondisclosure policies, forms and agreements to contain specified language preserving the right of government employees to disclose certain protected information. This section would codify the so-called anti-gag provision that has been included in federal appropriations bills since 1988.

Critical Infrastructure Information. Section (n) would clarify that section 214(c) of the Homeland Security Act (HSA) maintains existing WPA rights for independently obtained information that may also qualify as critical infrastructure information under the HSA.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 164—REAFFIRMING SUPPORT OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE AND ANTICIPATING THE COMMEMORATION OF THE 15TH ANNIVERSARY OF THE ENACTMENT OF THE GENOCIDE CONVENTION IMPLEMENTATION OF 1987 (THE PROXMIRE ACT) ON NOVEMBER 4, 2003

Mr. ENSIGN (for himself, Mr. CORZINE, Mr. EDWARDS, Mr. BAYH, Mr. SARBANES, Mr. CONRAD, Mr. REED, Ms. LANDRIEU, Mr. JEFFORDS, Mr. KOHL, Mr. LIEBERMAN, Mr. KENNEDY, Mr. ALLEN, Mr. BIDEN, Mr. SANTORUM, Mrs. DOLE, Mrs. BOXER, and Mr. DURBIN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 164

Whereas, in 1948, in the shadow of the Holocaust, the international community responded to Nazi Germany's methodically orchestrated acts of genocide by approving the Convention on the Prevention and Punishment of the Crime of Genocide, done at Paris on December 9, 1948;

Whereas the Convention on the Prevention and Punishment of the Crime of Genocide confirms that genocide is a crime under international law, defines genocide as certain acts committed with intent to destroy a national, ethnical, racial, or religious group, and provides that parties to the Convention undertake to enact domestic legislation providing effective penalties for persons who are guilty of genocide;

Whereas the United States, under President Harry Truman, was the first nation to sign the Convention on the Prevention and Punishment of the Crime of Genocide;

Whereas the United States Senate approved the resolution of advice and consent to the Convention on the Prevention and Punishment of the Crime of Genocide on February 19, 1986;

Whereas the Genocide Convention Implementation Act of 1987 (the Proxmire Act) (Public Law 100–606), signed into law by President Ronald Reagan on November 4, 1988, enacted chapter 50A of title 18, United States Code, to criminalize genocide;

Whereas the enactment of the Genocide Convention Implementation Act marked a principled stand by the United States against the crime of genocide and an important step toward ensuring that the lessons of the Holocaust, the Armenian Genocide, and genocides in Cambodia, Rwanda and elsewhere will be used to help prevent future genocides;

Whereas a clear consensus exists within the international community against genocide, as evidenced by the fact that 133 nations are party to the Convention on the Prevention and Punishment of the Crime of Genocide;

Whereas, despite this consensus, many thousands of innocent people continue to fall victim to genocide, and the denials of past instances of genocide continue; and

Whereas November 4, 2003 is the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act): Now, therefore, be it

Resolved, That the Senate—

(1) reaffirms its support for the Convention on the Prevention and Punishment of the Crime of Genocide;

(2) anticipates the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003; and

(3) encourages the people and the Government of the United States to rededicate themselves to the cause of ending the crime of genocide.

SENATE RESOLUTION 165—COMMENDING BOB HOPE FOR HIS DEDICATION AND COMMITMENT TO THE NATION

Mr. FRIST submitted the following resolution; which was considered and agreed to:

S. RES. 165

Whereas Bob Hope is unique in the history of American entertainment and a legend in vaudeville, radio, film, and television;

Whereas Bob Hope is a dedicated patriot whose unselfish and incomparable service to his adopted country inspired him, for more than six decades, from World War II to the Persian Gulf War, to travel around the world to entertain and support American service men and women;

Whereas Bob Hope has personally raised over $1,000,000,000 for United States war relief and over seventy United States charities;

Whereas Bob Hope's life long commitment to public service has made him one of the most loved, honored, and esteemed performers in history, and has brought him the admiration and gratitude of millions and the friendship of every President of the United States since Franklin D. Roosevelt;

Whereas Bob Hope, in a generous commitment to public service, has donated his personal papers, radio and television programs, scripts, his treasured Joke File and the live appearances he made around the world in support of American Armed Forces to the Library of Congress (the ''Library'') and the American people;

Whereas Bob and Dolores Hope and their family have established and endowed in the Library a Bob Hope Gallery of American Entertainment—a permanent display of rotating items from the Hope Collection—and has donated a generous gift of $3,500,000 for the preservation of the collection; and

Whereas all Americans have greatly benefitted from Bob Hope's generosity, charitable work, and extraordinary creativity: Now therefore, be it

Resolved, That the Senate—

(1) commends Bob Hope for his dedication and commitment to the United States of America;

(2) expresses its sincere gratitude and appreciation for his example of philanthropy and public service to the American people; and

(3) directs the Secretary of the Senate to transmit a copy of this resolution to Bob Hope.

SENATE CONCURRENT RESOLUTION 52—EXPRESSING THE SENSE OF CONGRESS THAT THE UNITED STATES GOVERNMENT SHOULD SUPPORT THE HUMAN RIGHTS AND DIGNITY OF ALL PERSONS WITH DISABILITIES BY PLEDGING SUPPORT FOR THE DRAFTING AND WORKING TOWARD THE ADOPTION OF A THEMATIC CONVENTION ON THE HUMAN RIGHTS AND DIGNITY OF PERSONS WITH DISABILITIES BY THE UNITED NATIONS GENERAL ASSEMBLY TO AUGMENT THE EXISTING UNITED NATIONS HUMAN RIGHTS SYSTEM, AND FOR OTHER PURPOSES

Mr. HARKIN (for himself, Mr. CHAFEE, and Mr. KENNEDY) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 52

Whereas all people are endowed with an inestimable dignity, which is based on autonomy and self-determination, and which requires that every person be placed at the center of all decisions affecting such person, and the inherent equality of all people and the ethical requirement of every society to honor and sustain the freedom of any individual with appropriate communal support;

Whereas more than 600,000,000 people have a disability;

Whereas more than two-thirds of all persons with disabilities live in developing countries, and only 2 percent of children with disabilities in the developing world receive any education or rehabilitation;

Whereas during the last 2 decades, a substantial shift has occurred globally in governmental and nongovernmental institutions from an approach of charity toward persons with disabilities to the recognition of the inherent universal human rights of persons with disabilities;